United States Court of Appeals

for the Second Circuit

APPENDIX

NO. 76-4038

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

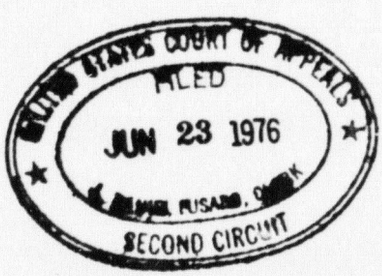
CONTAINAIR SYSTEMS CORPORATION,

Respondent.

B
P/S

On Application for Enforcement of an Order of
The National Labor Relations Board

APPENDIX



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APPENDIX

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CONTAINAIR SYSTEMS CORPORATION and LOCAL 295, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	Case No. 29-CA-3770
Steven Davis, Esq., for the General Counsel. Irving Brand, Esq., Eugene J. D'Ablemont, Esq., on the brief (Kelley Drye Warren Clark Carr and Ellis), New York, N.Y., for the Respondent. David Kramer, Esq. (Friedlander, Gaines, Cohen, Rosenthal & Rosenberg), New York, N.Y., for the Charging Party.	

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Containair Systems Corporation

Case No.: 29-CA-3770

3.20.74	Charge filed
7. 3.74	Complaint, Notice of Pre-Hearing Conference, and Notice of Hearing, dated
7.11.74	Regional Director's letter concelling pre-hearing conference, dated
7.16.74	Respondent's Answer, received
8. 6.74	Respondent's request for an adjournment of hearing, dated
8. 7.74	Order Rescheduling Hearing, dated
9.12.74	Hearing opened
10. 3.74	Administrative Law Judge's Order closing hearing, dated
11.13.74	Respondent's Motion to Correct Official Report of Proceedings, received

2.13.75	Administrative Law Judge's Decision issued
3.24.75	Respondent's Exceptions to the Administrative Law Judge's Decision and Recommended Order, received
6.26.75	Decision and Order issued by the National Labor Relations Board

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[Issued 2/13/75] [JD-60-75
Springfield Gardens, N.Y.]

* * * * *

DECISION

Statement of the Case

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard at Brooklyn, New York, on September 12 and 13, 1974 (all dates herein in 1974 unless otherwise noted), upon a complaint issued on July 3, based upon a charge filed by the above-named Charging Party (herein "the Union") on March 20. At Respondent's request, the hearing was adjourned on September 13, to afford Respondent an opportunity to secure certain rebuttal testimony. On October 1, Respondent advised that it had no further evidence and agreed to the closing of the record. By Order dated October 3, the hearing in this matter was closed. That Order is hereby received into the record as ALJ Exhibit No. 1. The complaint alleges that the above-named Respondent at the conclusion of a strike of its employees on March 14, refused to reinstate one of its employees, Richard Barth, to his former or substantially equivalent position of employment in

violation of Sections 8(a)(1) and (3) of the Act. Respondent's answer to the complaint, as amended at the hearing, denies the commission of the unfair labor practices alleged, with certain affirmative defenses considered hereinafter, but admits allegations of the complaint sufficient to justify the assertion of jurisdiction under the current standards of the Board (Respondent, in the course of its manufacturing operations, in a recent annual period, sold and delivered from its plant at Springfield Gardens, New York, goods and material in interstate commerce of a value in excess of $50,000), and to support a finding that the Union is a labor organization within the meaning of the Act.

Upon the entire record in this case, [1/] from observation of the witnesses and their demeanor, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

Findings and Conclusions

I. Issues

Richard Barth, Respondent's shipping clerk, joined a strike of Respondent's employees which began on February 22. Since the conclusion of the strike on March 14, Respondent has not reinstated Barth to employment. As previously noted, General Counsel contends this violated the Act. Respondent, however, contends --

(1) that Barth did not make a separate and individual unconditional offer to return to work after the strike. Nevertheless,

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1/ Respondent's motion to correct the transcript of record, which is unopposed has been carefully considered. It is hereby granted except for the corrections proposed at page 149 line 20 and page 221 line 16. However, on the latter page and line change "onese" to "ones."

Respondent's answer to the complaint admits, inter alia, "that on or about March 14, 1974, Richard Barth asked Respondent about his job status," and that on that same date the Union sent Respondent a telegram asserting that Barth and others had "asked to return to work" and were refused. The answer also alleges, in part, "that on or about March 14, 1974, Respondent told Barth that Respondent and its counsel were presently reviewing his conduct to determine whether or not Respondent had any obligation to retinstate him and that it would inform him of the determination."

(2) that Respondent, by letter in answer to the Union's telegram of March 14, agreed to take back all striking employees who applied at the start of business on March 18, except those who had been permanently replaced and those who had engaged in "acts of misconduct," and that Barth did not report to the plant on that date or thereafter.

(3) that Barth engaged in acts of misconduct during the strike disqualifying him for reinstatement.

(4) that Barth engaged in misconduct in the performance of his job prior to the strike, discovered by Respondent during the strike, for which he would have been discharged in the normal couse of business, and which justifies Respondent in refusing to reinstate him.

II. The Facts

A. Introduction

Barth was originally hired by Respondent on August 29, 1972, to do assembly work. He began performing duties of the shipping clerk about October 1973 (though probably not on an exclusive basis until later). Those duties included preparing bills of lading, calling carriers to pick up goods for customers, loading and unloading trucks, and returning proper paperwork to the office so that the customer would be billed. The details of this shipping and billing process are important to understanding the nature of Respondent's defense.

Respondent makes containers used by airlines and other freight forwarders. When an order is received from a customer, office clericals make up a multicopy invoice form. One copy, colored orange, serve as a production request and later as a packing list. Another copy, colored green, is placed in a tray on the billing clerk's desk. Other copies apparently go into customer files. When production of the order is complete, the shipping clerk gets the orange copy from the office. He then makes out a multicopy bill of lading form and calls the carrier to come pick up the product. At that time the name of the carrier and the date the carrier is called is placed on the bill of lading. When the product is loaded, the carrier's driver or other agent signs the copies of the bill of lading, usually with a stamp and initials. The shipping clerk likewise initials these forms. One copy of the bill of lading with the orange packing list are given to the carrier, two copies of the bill of lading are brought into the office by the shipping clerk the day the shipment is made or the next day, and the invoice is dated and the customer is billed on the day the bill of lading is brought into the office, or on the following day. The various copies, including the green invoice, are then filed. As noted in detail hereinafter, Respondent contends that Barth did not properly handle this paperwork during the period immediately prior to the strike.

B. Alleged Strike Misconduct

It appears that union organization among the employees took place on February 20 and 21. Barth signed a union authorization card on February 21. Respondent's employees went out on strike on the morning of February 22, to secure recognition of the Union. Of a plant complement of about 30, approximately 20 ceased work that morning. It appears from Barth's testimony that he was not informed in advance of the work stoppage, but joined it when he became aware that

the plant employees had gone out. Barth picketed the plant each working day thereafter through March 13.

On February 25, 3 days after the start of the strike, Respondent filed two charges with the Board against the Union, one (Case No. 29-CB-1729) asserting that the Union or its agents were restraining or coercing employees in the exercise of rights under the Act, and the second (Case No. 29-CC-401) asserting that the Union or its agents were engaging in a secondary boycott for the purpose of compelling Emery Air Freight Corp. to cease doing business with Respondent. After investigation, the Regional Director of the Board, on March 6, issued a consolidated complaint against the Union, alleging that the Union had caused employees of Emery to cease handling Respondent's products to compel Emery to stop doing business with Respondent, and also alleging that certain named employees (not including Barth), and others not named had threatened bodily harm to nonstriking employees and damage to Respondent's property.[2/] Thereafter, the Regional Director, over Respondent's objection, approved a settlement of the complaint against the Union. The proposed settlement was submitted to Respondent for agreement sometime after March 12. Respondent objected to the settlement by letter dated March 18. It was approved by the Regional Director, with some alterations, after that date. Respondent has since appealed this action to the General Counsel of the Board and to the Board, the Board's Decision and Order being issued on July 16.

2/ It is clear that the Regional Director did not have any evidence which he considered strike misconduct on Barth's part. Thus, in the present case, the Regional Director refused to proceed on the Union's charge that Respondent had refused to reinstate a number of employees other than Barth because the Regional Director was convinced that they had engaged in disqualifying strike misconduct.

Respondent adduced certain evidence of Barth's activities during the strike. Respondent's vice president, George Estrada, testified that he saw Barth speak to about five truckdrivers who approached the plant, all of whom refused to pick up or deliver at Respondent's plant. Estrada did not hear what was said. Barth recalled speaking to as many as three drivers ("not many more than that"), explaining that the employees were on strike, and leaving it to the drivers to decide whether to cross the picket line. Barth recalled one who crossed (Estrada recalled one driver who crossed the line but then refused to make delivery). Respondent was granted an adjournment, as noted above, to ascertain and interview the drivers involved, in order that Respondent might call them as witnesses in respect to these incidents. Respondent later agreed that the record might be closed without this testimony.

Estrada testified that Respondent was unable during the strike to get the carriers it normally called to come to the plant to pick up or deliver, and Respondent either made deliveries itself or dropped off shipments at the carriers' terminals.

On one occasion, Estrada recalled, a lumber truck came to the plant during the strike and was unable to get to the loading platform because Barth's car was "a little" in the driveway. When asked to move his car, Barth did so. Nevertheless, the lumber truck was unable to unload at the dock because of the size of the load, and an effort was made to unload the truck in the middle of the street. At this point, Estrada asserts, Barth got in the way, stating that he had as much right in the street as the truck. [3/] Estrada states that he told Barth that if the latter did not move his car, Estrada would call the police, and he

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3/ Estrada also asserted, without any detail, that Barth was "abusive" on this occasion. In the absence of specifics, it is inferred that Estrada was referring to Barth's statement referred to above.

went into the office to do so. When he came out of the office, Barth's car was moved. The police did not come. The lumber truck was unloaded. Estrada estimated that the entire incident took 20 to 25 minutes.

Estrada also recalled that in one instance when he and another employee were taking Respondent's truck to Emery Air Freight, a group of employees in cars, including Barth, followed the truck to Emery. So far as the record shows, neither Barth or any of the other employees engaged in any conduct designed to interfere with Respondent's delivery. Emery's employees refused to accept delivery, however. Barth states that on one occasion in which a truck left Respondent's plant with Estrada, Barth assumed that it was going to Emery, and he says he then went to Emery by a different route and was at the Emery premises at the time Respondent's truck was there. Barth admits that he also did this on another occasion. It is not necessary to the resolution of the issues to determine whether Barth actually followed Respondent's truck or proceeded by a different route on these occasions.

C. Alleged Misconduct on the Job

In general, Respondent contends that during the strike, it discovered that Barth had been very negligent in handling his duties prior to February 22, the date of the strike, in that either goods had not been shipped which were ready or bills of lading were not brought into the office for materials that had been shipped so that the customer could be billed.

Estrada testified that during the week before the strike, about 4 to 6 customers whose names he did not recall called to complain of nondelivery of goods which had been ordered. (Mandell estimated, on cross-examination, that Respondent ordinarily received about three such calls a week.) Estrada states that he then went to Barth, who

could not find material on these orders among the paperwork on his desk and said that the shipments "should have gone out." Estrada asserts that he was satisfied with this and made no further investigation.

Office Manager Mandell stated that about February 26, she noted an excessive amount of green copies of invoices accumulated in the billing clerk's tray. Since she understood that production was "up to schedule," she asserts she couldn't understand this accumulation, which indicated that shipments had not been made. This was brought to Estrada's attention [4/] and he went to Barth's office, where he states he discovered 3 or 4 bills of lading which he took into the office to be processed. [5/] Three bills of lading which Estrada found on Barth's desk at this time were placed in evidence. These were processed by Respondent about February 26, being delivered by Respondent's truck to the carrier or to the customer. One of these bills of lading, involving a consignment to General Electric, is dated February 8, indicating that Barth had called the carrier (the original carrier's name is scratched out on the form). There is no explanation as to the failure of the carrier to make the pickup. The second of these, involving a consignment to Hodes Daniel, is dated February 19 (again, the original carrier's name is crossed out). Since these documents were undoubtedly dated when Barth called the carrier, it is possible that when the carrier arrived, the picket line had been established. The third bill of lading, involving Wilson Air Freight, is also dated February 19. It does not seem to have had the name of a carrier

4/ During the strike no specific individual was assigned the duties of the shipping clerk.

5/ Later, on cross-examination, Estrada recalled that on this occasion, he also found a number of yellow invoice copies on Barth's desk, which Estrada states Barth had been given "at the last minute," so that he could not have made bills of lading for them.

inserted, but the record shows that Wilson customarily picked up its orders with its own trucks, which refused to cross the picket line during the strike.

About February 29, Respondent made a special effort to deliver an order to a customer in Respondent's own truck, since the order had been promised for about February 22. It was discovered that the customer had already received the order. Estrada states that there was no evidence in the office papers that the materials had been shipped, so he went to Barth's office where he found Barth's copy of the bill of lading in the proper place, indicating that shipment had been made on February 21. 6/

Mandell also referred briefly, and without any details, to a customer who assertedly called during the strike to complain of a damaged container which Respondent had no record of ever shipping.

Mandell testified that during the last of February and the first of March an excessive number of calls were received from customers complaining of nondelivery of materials ordered. 7/ Neither Mandell nor Estrada could recall the name of a single customer who called, with the possible exception of Wilson Air Freight. Estrada states that when he became aware of this situation, he went into Barth's office, and began going through his desk. Estrada testified that he

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6/ When it was suggested to Estrada that in the normal course of Respondent's operations the failure of the office to learn of this shipment could reasonably be attributed to the intervention of the strike, Estrada concurred.

7/ Office Manager Mandell at one point estimated 10 to 15 or more calls per week from customers during this period, at another she referred to 10 calls a day during the same period. Some, or many of these asserted calls were said to have been taken by other persons in Respondent's office who did not testify or were no longer employed. I have considerable doubt concerning the accuracy of these and other unsupported estimates given by Respondent's witnesses with respect to Barth's asserted delinquencies.

discovered 15 or 20 bills of lading in different parts of Barth's desk. Estrada states that some of these had been signed by carriers, showing that the materials had been picked up; others had not been signed; some of these apparently had yellow packing lists attached. Mandell says that Estrada brought "a fistful" of bills of lading into the office on this occasion. However, Respondent was unable to produce any documentation with respect to this group of papers at the hearing. It is asserted that some were discarded by a clerical (who did not testify), and others have been melded into Respondent's records after being processed for shipment or billing. Respondent's witnesses thus were unable to identify the names of the customers involved or the dates the products had been ready for shipment. However, considering that these asserted calls came about the second week of the strike, it seems likely any shipments Barth would have been expected to make would have been ready about the time the strike occurred.

Barth testified credibly that it was his custom to call the carrier right after making out the bill of lading, that he had never been warned or reprimanded about his work for Respondent, that he had never told Estrada that orders had gone out when they had not, and that he never concealed, hid, or buried bills of lading in his desk in any way.

D. End of the Strike

About 8 a.m., on March 14, approximately 6 to 8 of the striking employees came into Respondent's main office. One of the employees, Al Williams, asked Estrada if the employees could have their jobs back. [8/] Estrada informed them that he would have to talk to the

8/ On cross-examination, Barth gave the following testimony upon which Respondent particularly relies: "Q. (Mr. Brand) Did Al Williams ask for everybody's job together as a group? A. Yes, he did." Just previous, Barth had stated that Al Williams "asked for all of us, could we all have our jobs back."

his lawyer first and suggested that they wait outside the plant premises. The employees (or some of them, including Barth) returned about 10 a.m., at which time Estrada informed them that he had not yet contacted his lawyer and requested that the employees return home and call him back later that day. It appears that it was understood that the employees would call individually from their homes. The only two who testified, Barth and Norman Davis, called separately. Estrada told Davis to come back to work that afternoon. Barth was told to come in to the plant the next morning.

Estrada asserts that he told the employees as a group to call back that evening, and that when Barth called, Estrada told him to come in the next morning, "at which time we were having a meeting with our attorneys and all the decisions would have been made on everyone."

A number of the employees who had been on strike assembled at the plant the next morning. They were called into Estrada's office one at a time. Estrada spoke to Barth in the presence of Respondent's president, Kupersmit, and Becker, vice president in charge of marketing. Neither of the latter testified. Barth testified that at this meeting, Estrada told him that Respondent could not take Barth back to work because "we have charges brought up against you, so you will have to wait until the hearing comes up." Barth states that Estrada did not explain what he meant by that, and Barth thought he was going to be taken to court. Estrada asserts that on this occasion, he told Barth, "I couldn't put him back to work at the time, he was being investigated on a few of the incidents that had occurred during the strike and I would let him know." Estrada states that, although he did not inform Barth, the incidents he was referring to were those concerning which he had previously testified, "particularly some of the problems we had had with the customers and the bills of lading, the mixup." As

between the two versions, I credit Barth. Estrada's testimony does not stand up well under analysis. As to Barth's alleged misconduct on the job before the inception of the strike, Respondent, on March 15, then knew what it now claims was the basis for its refusal to reinstate Barth. There is no evidence that Respondent was then engaged in, or has thereafter instituted any investigation of Barth's work performance in addition to the matters it had already discovered. If Respondent was concerned merely with Barth's work performance, it might be expected that the issue would have been discussed with Barth on this occasion, on March 15. This did not occur.

On the other hand, Respondent was admittedly motivated in part by Barth's strike activities (particularly his conversation with drivers at the plant, his involvement with a delivery by a lumber truck, and his appearance at Emery Air Freight premises when Respondent's truck was there during the strike) in denying him reinstatement at the end of the strike. At the time Respondent apparently still considered that there would be a hearing on the charges which it had filed with the Board. I have no doubt that it was to these proceedings that Estrada had reference in his conversation with Barth. 9/

Barth has not heard from Respondent since March 15. In either April or May, Respondent permanently replaced Barth. It also appears that since March 15, Barth has not returned to Respondent's premises to further seek reinstatement.

On March 14, the Union sent a telegram to Respondent asserting that 23 named employees, including Barth, had "asked to return to work 3/14/74 at 9 a.m. They were refused entrance to the premises."

9/ In reaching this conclusion I have carefully considered the several asserted inconsistencies in Barth's testimony upon which Respondent relies in its brief. They are the sort of transparent errors which may be expected of an honest witness and do not affect Barth's credibility on this point.

Respondent's counsel replied by letter dated March 15, asserting that the Union was wrong in its facts and continuing as follows, in pertinent part:

> Seven (7) of the listed employees did come to Containair's premises at least one hour after the normal starting time on March 14, 1974, and were told to return later that day for information pending the Company's review of when the Company may need any of them for work and pending the Company's review with counsel of its obligations to some of them who either have been permanently replaced or who engaged in acts of misconduct. None of the seven employees returned to the Company that day although the Company had the necessary information affecting each of them. Today, two of the seven are back.
>
> . . . Containair will accept back at work all employees except those who have been permanently replaced or who have committed acts of misconduct justifying Containair in denying them reinstatement. As to employees permanently replaced, they will be placed on a preferential hiring list as job openings may develop. Have employees report to Containair at the start of business on Monday, March 18 when each will be told of his individual job status.

III. Analysis and Conclusions

Respondent argues that there is no showing that Barth made an unconditional offer to return to work apart from the other strikers. I disagree. There is no persuasive evidence that the strikers offered to come back only as a group and not individually. Barth's agreement, on cross-examination, that the spokesman for the employees "asked for everybody's job together as a group" is not to the contrary. It is manifest from the record as a whole that the request was for

reinstatement of each individual employee. Respondent's vice president, Estrada, clearly understood that they were requesting reinstatement individually, and, in fact, considered them individually. 10/ At Estrada's request, Barth individually called on the afternoon of March 14 to see if he could have his job back. When he came to the plant the next morning at Estrada's request, Barth was interviewed individually, and was told that Respondent could not take him back because Respondent had charges against him and that Barth would have to await the outcome of the anticipated hearing. On the basis of the entire record, it is found that Respondent was aware from the morning of March 14, and thereafter, that unconditional offers to return to work had been made on behalf of Barth and other individual striking employees, and decided whether to reinstate the strikers on an individual basis.

Respondent next contends that Barth should have come to the Respondent's plant on March 18, the date set in Respondent's letter to the Union as the time when Respondent would inform the strikers of their status with Respondent. This is clearly without merit. Barth had previously been personally refused reinstatement. In the absence of some personal notification from Respondent that the situation had changed, he was not required to engage in what would appear to be a completely futile act.

On the basis of the record considered as a whole, and the analysis previously made, it is found that Respondent refused to reinstate Barth because it considered that he had engaged in disqualifying misconduct during the strike. I am convinced that Respondent's contention that Barth was not reinstated because of alleged job misconduct prior to the strike is a afterthought advanced to support the

10/ Estrada states that he advised Barth on March 14 that Respondent was making individual decisions on each of the strikers. This is confirmed in Respondent counsel's letter of March (Cont'd)

decision originally made on the basis of Barth's conduct during the strike.

Upon consideration of all the evidence, I also find that Barth's strike activities shown by the record do not rise to the character of misconduct which would disqualify him from reinstatement. Though he spoke to several drivers who approached the picket line (most of whom refused to pick up or deliver at the plant), it is not shown that he said anything involving misconduct. While, on one occasion, Barth slightly impeded a lumber truck from entering Respondent's driveway, when asked to move, he did so. Thereafter, when, on this same occasion, he is said to have impeded the same truck which was seeking to unload in the public street, Barth again moved, after some stronger objection on his part, and the truck, in fact, unloaded. On another occasion (or two), Barth was physcially present at the premises of one of Respondent's customers at a time when the customer's employees refused to unload or accept goods delivered by Respondent's truck. However, it is not shown that Barth did anything on these occasions other than being there at the time. I find nothing to censure in Barth's conduct in respect to truck drivers approaching the plant during the strike, or in his presence at a customer's plant when Respondent's truck was there, where nothing more is shown. At the most, Barth's conduct with respect to the lumber truck may constitute a single incident of impulsive minor misconduct of a character which the Board and the Courts have customarily found not to be disqualifying for reinstatement. See, e.g., Coronet Casuals, Inc., 207 NLRB No. 24, and cases cited therein.

10/ (Continued) 18. Respondent's answer to the complaint admits "that on or about March 14, 1974, Richard Barth asked Respondent about his job status."

For the reasons stated, and on the record considered as a whole, it is found that Respondent, by refusing and failing to reinstate Richard Barth upon his unconditional offer to return to work on March 14, interfered with, restrained and coerced employees in the exercise of their rights under Section 7 of the Act, and discouraged membership in a labor organization by discrimination in regard to employment of an employee, in violation of Sections 8(a)(1) and (3) of the Act.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to reinstate Richard Barth within 5 days after his unconditional offer to return to work made on March 14, 1974, Respondent violated Sections 8(a)(1) and (3) of the Act, which unfair labor practices affect commerce within the meaning of Sections 2(6) and (7) of the Act.

The Remedy

It having been found that the Respondent has engaged in unfair labor practices in violation of Sections 8(a)(1) and (3) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent unlawfully refused and failed to reinstate Richard Barth within 5 days after March 14, 1974, it will be recommended that Respondent offer Richard Barth immediate reinstatement to his former job, or if such job no longer exists, to a substantially equivalent job, without loss of seniority or other rights

or privileges, discharging if necessary any replacements hired, and make him whole for any loss of earnings he may have suffered by payment of a sum of money equal to the amount he normally would have earned as wages during the period from March 19, 1974, to the date of Respondent's offer of reinstatement, less his net earnings during that period, in accordance with the Board's formula set forth in F. W. Woolworth Company, 90 NLRB 289, with interest thereon at the rate of 6 percent per annum, as set forth in Isis Plumbing & Heating Co., 138 NLRB 716.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I issue the following recommended: 11/

ORDER

Containair Systems Corporation, the Respondent herein, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to reinstate, or otherwise terminating its employees for engaging in the exercise of rights guaranteed by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

11/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Offer Richard Barth immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent job, without loss of seniority or other rights or privileges, discharging if necessary any replacements, and make him whole for any loss of earnings he may have suffered by reason of Respondent's refusal to reinstate him, in accordance with the provisions of the section entitled "The Remedy," above.

(b) Preserve and make available to the Board, or its agents, upon request, payroll and other records to facilitate the effectuation of the Order herein.

(c) Post at its operations at Springfield Gardens, New York, copies of the attached notice, marked "Appendix." [12] Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said Notices are not altered, defaced, or covered by any material.

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order what steps Respondent has taken to comply herewith.

Dated at Washington, D.C.

/s/ Sidney J. Barban
Administrative Law Judge

12/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

THE NATIONAL LABOR RELATIONS ACT STATES THAT EMPLOYEES HAVE THE RIGHT

- to self-organization, to form, join, or assist labor organizations,
- to bargain collectively through representatives of their own choosing,
- and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,
- and to refrain from any or all such activities except to the extent that this may be affected by a lawful bargaining agreement requiring membership in a labor union as a condition of employment.

WE WILL NOT refuse to reinstate, or otherwise terminate employees for engaging in the exercise of rights guaranteed by the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by the Act.

WE WILL offer Richard Barth immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent job, without loss of seniority or other rights or privileges, discharging if necessary any replacements hired, and WE WILL make Richard Barth whole for any loss of earnings he may have suffered by reason of the Company's refusal to reinstate him at the end of the strike, in accordance with the Order of the National Labor Relations Board.

CONTAINAIR SYSTEMS CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York, TEL" 596-3535; 596-5291.

[Dated 6/26/75] [D-107
Springfield Gardens, N.Y.]

* * * * *

DECISION AND ORDER

On February 13, 1975, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Containair Systems Corporation, Springfield Gardens, New York, its officers, agents, successors and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. June 26, 1975.

Betty Southard Murphy, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL'S EXHIBIT NO. 2

G.C. Ex. 2

Ledger No. _____

Application for Membership

LOCAL UNION 295
AIR FREIGHT CHAUFFEURS, HANDLERS, WAREHOUSEMEN AND ALLIED WORKERS
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
179-30 149th Avenue, Jamaica, N.Y. 11434 · Tel. 527-7170

I hereby apply for membership in the above Union and voluntarily choose and designate it as my representative for purposes of collective bargaining, hereby revoking any contrary designation.

Signed Richard Barth (NAME) 2/21/74 (DATE)

258-15-147th AVE (ADDRESS) Rosedale (CITY) N.Y. (STATE) (Zip Code) 341-1286 (TELEPHONE)

Employed by CONTAINAIR SYSTEMS (FIRM NAME) 145-80 22[illegible] ST. (ADDRESS)

Date of Birth 2-1-52 Social Security No. 113-46-5860

I hereby voluntarily authorize and direct my Employer to deduct my [redacted] and union dues due Local 295, I. B. of T., from my wages from my first pay for each month and to pay the same to Local 295, I. B. of T. This checkoff authorization is executed apart from, and independent of, the existence of the Union security provisions and the necessity of paying Union Dues contained in and required by the applicable collective bargaining agreement. It is my express intent that this checkoff authorization shall continue in full force and effect, and its continued validity shall not be affected in any manner whatsoever if the said Union security provisions and the necessity of paying Dues should become inoperative for any reasons whatsoever. This assignment and authorization shall be irrevocable for the period of one year, or until the termination of the collective bargaining agreement between my Employer and the Union, whichever occurs sooner; I agree and direct that this assignment and authorization shall be automatically renewed and shall be irrevocable for successive periods of one year, or for the period of each succeeding applicable collective agreement between my Employer and the Union, whichever shall be shorter, unless written notice by registered mail is given by me to my Employer and the Union not more than twenty days and not less than ten days prior to the expiration of each period of one year, or of each applicable collective agreement between my Employer and the Union, whichever occurs sooner.

Signed Richard Barth (NAME) 2/21/74 (DATE)

JOINT EXHIBIT NO. 1

FORM NLRB-501 (2-74)

Form Approved
Budget Bureau No. 64-R1134

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CB-1729

Date Filed 2-25-74

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: Local No. 295, International Brotherhood of Teamsters

b. Union Representative to Contact: James Custer

c. Phone No.: 291-2127

d. Address (Street, city, State and ZIP code): 179-30 140th Avenue

e. The above-named organization(s) or its agents (has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 8(b)(1)(A) (This Subsection) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

From on or about February 22, 1974, the above-named labor organization or its agents are restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

JOINT EX 1

3. Name of Employer: Containair Systems Corporation

4. Location of Plant Involved (Street, city, State and ZIP code): 145-80 228th Street, Springfield Gardens, New York 11413

5. Type of Establishment (Factory, mine, wholesaler, etc.): Factory

6. Identity Principal Product or Service: Containers

7. No. of Workers Employed: 31

8. Full Name of Party Filing Charge: Same as above

9. Address of Party Filing Charge (Street, city, State and ZIP code): Same as above

10. Telephone No.: 276-6500

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Kelley Drye Warren Clark

By Carr A. Ellis (Signature of representative or person making charge)

Eugene T. D'Ablemont, Partner (Title, if any)

Address: 350 Park Avenue, New York, New York 10022

752-5800 (Telephone number)

February 25, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 865-421

JOINT EXHIBIT NO. 2

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R003.14

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CC-401

Date Filed 2-25-74

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
Local No. 295, International Brotherhood of Teamsters	James Custer	527-7170

d. Address (Street, city, State and ZIP code)

179-30 140th Avenue, Jamaica, New York

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 8(b)(4)(B) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

From on or about February 25, 1974, the above-named labor organization or its agents are engaging in, or inducing or encouraging any individual employee by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, and are threatening, coercing or restraining persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require Emery Air Freight Corp. and others to cease using, handling, transporting, or otherwise dealing in the products of Containair Systems Corporation.

JOINT. EX. 2

3. Name of Employer
Containair Systems Corporation

4. Location of plant involved (Street, city, State and ZIP code)
145-80 228th Street, Springfield Gardens, New York 11413

5. Type of Establishment (Factory, mine, wholesaler, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Factory	Containers	31

8. Full Name of Party Filing Charge
Same as above

9. Address of Party Filing Charge (Street, city, State and ZIP code)	10. Telephone No.
Same as above	276-6500

11. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person making charge)

Eugene T. D'Ablemont, Partner (Title, if any)

Address 350 Park Avenue, New York, New York 10022

752-5800 (Telephone number)

February 25, 1974 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

BEST COPY AVAILABLE

JOINT EXHIBIT NO. 3

LOCAL 295, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WARE-
HOUSEMEN AND HELPERS OF AMERICA

and

CONTAINAIR SYSTEMS CORPORATION

Cases Nos.
29-CB-1729
29-CC-401

ORDER CONSOLIDATING CASES, COMPLAINT; NOTICE OF PRE-HEARING CONFERENCE; AND NOTICE OF HEARING

It having been charged in Case No. 29-CB-1729 by Containair Systems Corporation, herein called Containair, and in Case No. 29-CC-401 by Containair, that Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for Region 29, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the Board's Rules and Regulations - Series 8, as amended that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended Section 102.15 hereby issues this Order Consolidating Cases, Complaint; Notice of Pre-Hearing Conference; and Notice of Hearing and alleges as follows:

1. (a) The Charge in Case No. 29-CB-1729 was filed by Containair on February 25, 1974, and served by registered mail upon Respondent, on February 25, 1974.

(b) The Charge in Case No. 29-CC-401 was filed by Containair on February 25, 1974, and served by registered mail upon Respondent, on February 25, 1974.

2. (a) Containair is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein Containair has maintained its principal office and place of business at 145-80 228 Street, Springfield Gardens, County of Queens, and State of New York, herein called the plant, where it is, and has been at all times material herein, engaged in the manufacture, sale and distribution of pilfer-proof containers, and related products, and is engaged in the business of packing cargo for transport by air.

(c) During the past year, which period is representative of its annual operations generally, Containair, in the course and conduct of its business, purchased and caused to be transported and delivered to its plant, paper, corrugated paper, wood, and other goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported and delivered to its plant in interstate commerce directly from states of the United States other than the state in which it is located.

(d) During the past year, which period is representative of its annual operations generally, Containair, in the course and conduct of its business operations, manufactured, sold and distributed at its plant, products valued in excess of $50,000, of which products valued in excess of $50,000 were shipped from said plant in inter-state commerce directly to states of the United States other than the state in which it is located.

3. (a) Emery Air Freight Corporation, herein called Emery, is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein Emery has maintained its principal office at 245 Park Avenue in the City and State of New York and places of business at Building 88, John F. Kennedy International Airport, Jamaica, New York, herein called the JFK Facility, and at 182-17 149 Road, Laurelton, New York, herein called The Laurelton Facility, and various other places of business throughout the United States, where it is, and has been at all times material herein, a common carrier engaged in the business of interstate air freight forwarding and in performing related services.

(c) During the past year, which period is representative of its annual operations generally, Emery, in the course and conduct of its business operations, derived gross revenues therefrom in excess of $50,000, from its interstate freight forwarding services.

4. Containair and Emery each are and have been at all times material herein persons engaged in commerce and in industries affecting commerce within the meaning of Sections 2(1), (6) and (7), and 8(b)(4) of the Act.

5. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

6. James Costa, Mickey Hunt, and Jack Moran, are, and have been at all times material herein, the President, Business Agent and Shop Steward, respectively of Respondent, acting on its behalf, and agents thereof.

7. At all times material herein, Emery has had a collective bargaining agreement with Respondent, covering, inter alia, freight handling employees at the JFK facility, including the terminal and dock employees of Emery at that facility.

8. Since on or about February 22, 1974, Respondent has been engaged in a labor dispute with Containair because Containair is not a party to a collective bargaining agreement with Respondent and because Containair's employees are not members of or represented by Respondent.

9. (a) On or about February 22, 1974, at the instance of Respondent and in its interest and behalf, and in furtherance of its dispute with Containair as described above in paragraph 8, various employees of Containair ceased work concertedly and went out on strike, and since that date have engaged in such work stoppage and strike.

(b) On or about February 22, 1974, Respondent commenced picketing and caused Containair to be picketed, at and in the vicinity of Containair's plant.

10. On or about February 22, and March 1, 1974, and at various other dates presently unknown during the period from February 22, to March 1, 1974, Respondent, by its agents and pickets, Eddie Lunsford, George Billips and Lonnie Gentry, and by other persons acting in its behalf, threatened various employees and supervisors of Containair to inflict bodily injury and other harm to their persons, and threatened to inflict damage to their property with an object to induce the said employees of Containair to support and assist Respondent, and not to cross the picket line established by Respondent at Containair's plant as described above in paragraph 9.

11. On or about February 25 and 26, 1974, and on other dates presently unknown in February and March, 1974, Respondent, in furtherance of its dispute with Containair, as described above in paragraph 8, above by Mickey Hunt, its Business Agent, encouraged and induced, ordered, requested, urged, instructed and directed its members employed by Emery at the JFK facility not to work on or otherwise handle freight or material received from Containair.

12. In furtherance of Respondent's dispute with Containair, as described above in paragraph 8, Respondent's members employed by Emery at the JFK facility, pursuant to the instructions issued to them by Respondent, as described in paragraph 11, above, from February 25 through 28, 1974 engaged in a work stoppage and a concerted refusal to work on, or otherwise handle, freight or products received from Containair.

13. On or about February 22, and 25 through 28, 1974, and on various other dates presently unknown, Respondent, by Mickey Hunt and Jack Moran, its Business Agent and Shop Steward, respectively, and its agents, threatened, coerced and restrained Emery and other persons engaged in commerce and in industries affecting commerce by the conduct described above in paragraphs 11 and 12, and by threatening Emery with labor problems, and by threatening Emery that it would not permit its members employed by Emery at the JFK facility to work on, or otherwise handle, products received from Containair, if Emery continued to use and handle Containair's products, or if Emery continued to do business with Containair.

14. Respondent, by the acts and conduct described in paragraphs 11 and 12 above, has engaged in, and has induced and encouraged individuals employed by Emery, and by other persons engaged in commerce or in industries affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services for their respective employers.

15. Respondent, by the acts and conduct described in paragraphs 11 through 13 above, has threatened, coerced and restrained Emery, and other persons engaged in commerce or in industries affecting commerce.

16. Respondent engaged in the conduct described above in paragraphs 11 through 15, in furtherance of its dispute with Containair, as described above in paragraph 8, and with an object to force and require Emery and other persons to cease using, selling, handling, transporting, and otherwise dealing in the products of Containair and to cease doing business with Containair.

17. By the acts described above in paragraph 10, and by each of said acts, Respondent restrained and coerced, and is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

18. By the acts described above in paragraphs 11 through 15, and by each of said acts, for the objects described above in paragraph 15, Respondent engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B), and Section 2(6) and (7) of the Act.

19. The acts of Respondent described above in paragraphs 10 through 16, occurring in connection with the operations of Containair, described above in paragraph 2, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 25th day of March 1974 at 4:00 p. m. at the Ceremonial Courtroom, 2nd Floor, U.S. District Court, 225 Cadman Plaza East, in the Borough of Brooklyn, City and State of New York, a pre-hearing conference will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board.

PLEASE TAKE FURTHER NOTICE that on the 10th day of April 1974, at 11:00 a. m. at 16 Court Street, Fourth Floor, in the

Borough of Brooklyn, State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Statement of Standard Procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Brooklyn, New York this 6th day of March 1974.

/s/ Samuel M. Kaynard
Regional Director
National Labor Relations Board
16 Court Street
Brooklyn, New York 11241

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the reponsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request,

the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

JOINT EXHIBIT NO. 4

JOINT EX. 4

Western Union Telegram

TBB173(1359)(2-019909E073)PD 03/14/74 1359
ICS IPMMTZZ CSP
2125277170 TDMT NEW YORK NY 82 03-14 0159P EDT
FON 2122766500
CONTAINAIR SYSTEMS ATTN JULIUS KUPERSMIT, FONE
145-80 228TH ST
SPRINGFIELD GARDENS NY 11413

MAR 18 1974

THIS WILL CONFIRM THAT YOUR EMPLOYEES WHO HAVE SIGNED UNION CARDS WITH LOCAL 295 I. B. OF T., J HENRY, G MARSHALL, E WILLIAMS, N DAVIS, Q ALVANDO, B LUGUERAS, H LLERAR, B HIGGINS, K LANE, G BILLUPS, L BILLUPS, L WALKER, R BARTH, E LUNSFORD, WILLIAMS, W BENNETT, L GENTRY, L RODRIQUEZ, C PHIPPS, A PIGNIAT, JAKES, J WHITE, AND A WILLIAMS HAVE ASKED TO RETURN TO WORK 3-14-74 AT 9AM. THEY WERE REFUSED ENTRANCE TO THE PREMISES
MARK DAVIDOFF LOCAL UNION 295
NNNN

BF-1201 (R5-69)

EXHIBIT "A"

JOINT EXHIBIT NO. 5

KELLEY DRYE WARREN CLARK CARR & ELLIS
350 Park Avenue
New York 10022

March 15, 1974

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark Davidoff
International Brotherhood
of Teamsters, Chauffeurs,
Warehousemen & Helpers of
America
Local 295
179-30 149th Avenue
Jamaica, New York 11434

Dear Mr. Davidoff:

Our client, Containair Systems Corporation, has referred to us for reply your telegram that our client received today and that states in part "this will confirm that your employees who have signed union cards with Local 295 IB of T [listing 23 names] have asked to return to work 3/14/74 at 9:00 A. M. They were refused entrance to the premises".

Our client has no knowledge and does not believe that the listed employees signed cards with your union. You confirm this by being totally wrong in your facts. Some of the employees you list either never left work or have returned to work long before March 14, 1974. Others who left work have never returned and have never asked to return to work.

Seven (7) of the listed employees did come to Containair's premises at least one hour after the normal starting time on March 14, 1974, and were told to return later that day for information pending the Company's review of when the Company may need any of them for work and pending the Company's review with counsel of

its obligations to some of them who either have been permanently replaced or who engaged in acts of misconduct. None of the seven employees returned back to the Company that day although the Company had the necessary information affecting each of them. Today, two of the seven are back at work.

Your telegram does not purport to be an unconditional offer to return to work on behalf of any of the listed employees. If you wish Containair to construe it as such, then you should know that Containair will accept back at work all employees except those who have been permanently replaced or who have committed acts of misconduct justifying Containair in denying them reinstatement. As to employees permanently replaced, they will be placed on a preferential hiring list as job openings may develop. Have employees report to Containair at the start of business on Monday March 18 when each will be told of his individual job status.

Containair will regard your telegram as formal notice that your strike for recognition is over and will so inform employees.

Very truly yours,

KELLEY DRYE WARREN CLARK CARR & ELLIS

By /s/ Eugene T. D'Ablemont
(A Member)

ETD'A:nw

JOINT EXHIBIT NO. 6

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, Containair Systems Corporation, herein called Containair, and the General Counsel of the National Labor Relations Board, that:

1. Upon charges filed by Containair on February 25, 1974, and served upon the Respondent on February 25, 1974, receipt of which charges is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 29, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 29 U.S.C., Sec. 151, et seq., herein called the Act and Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, issued a Complaint; Notice of Pre-Hearing Conference; and Notice of Hearing, against the Respondent on March 6, 1974. True copies of the aforesaid Complaint; Notice of Pre-Hearing Conference; and Notice of Hearing were duly served by registered mail on the Respondent and Containair on March 6, 1974, receipt of which are hereby acknowledged by all parties.

2. Containair is a New York corporation maintaining its principal office and sole place of business at 145-80 228 Street, Springfield Gardens, New York, where it is engaged in the manufacture, sale and distribution of pilfer-proof containers and related products, and is engaged in the business of packing cargo for transport by air.

Containair, in the conduct of its business operations during the 1 - year period ending March 1, 1974, its operations during said period

being representative of its operations at all times material herein, purchased paper, corrugated paper and wood of a value in excess of $50,000, all of which was purchased directly from business concerns located outside the State of New York, and was shipped by such concerns from points outside the State of New York directly to Containair at its plant. During the same period Containair, at its plant, manufactured and sold finished products of a value in excess of $50,000, all of which was sold and shipped to customers outside the State of New York. Containair is now and has been at all times material herein a person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1), 2(6) and (7) and 8(b)(4) of the Act.

3. Emery Air Freight Corporation, herein called Emery, is a New York corporation maintaining its principal office at 245 Park Avenue, New York, New York, and places of business at Building 88, John F. Kennedy International Airport, herein called the JFK facility, and at 182-17 149 Road, Laurelton, New York, herein called the Laurelton Facility and various other places of business throughout the United States, where it is a common carrier engaged in the business of interstate air freight forwarding.

Emery, in the conduct of its business operations during the 1-year period ending March 1, 1974, its operations during said period being representative of its operations at all times material herein, derived gross revenues therefrom in excess of $50,000, from its interstate freight forwarding services. Emery is now and has been at all times material herein a person engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1), 2(6) and 2(7) and 8(b)(4) of the Act.

4. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

5. All parties hereto waive the filing of answer, hearing, Administrative Law Judges' Decisions, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact or conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

6. This Stipulation, together with the charges, Complaint; Notice of Pre-Hearing Conference; and Notice of Hearing shall constitute the entire record herein.

7. Upon this Stipulation and the record as described in paragraph 6 hereof and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

ORDER

Respondent Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 295, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Threatening employees and supervisors of Containair Systems Corporation, herein called Containair, or any other employer, to inflict injury, or threatening to inflict damage with an object to induce employees of Containair or any other employer to support and assist Local 295, or not to cross the picket line established by Local 295 at Containair's plant.

(b) In any like or related manner restraining or coercing employees of Containair or any other employer, in the exercise of the rights guaranteed by Section 7 of the Act.

(c) In any manner or by any means, including strikes, work stoppages, picketing, threats, orders, directions, instructions, requests or appeals, however given, made or imparted, or by any

like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Emery Air Freight Corporation, herein called Emery, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or a refusal in the course of his employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, or in any manner or by any means, threatening, coercing or restraining Emery or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Emery or any other person, to cease doing business with Containair or any other person.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Post immediately in conspicuous places at its office at 179-30 149 Avenue, Springfield Gardens, New York, copies of the Notice to Members attached hereto and marked "Appendix A." 1/ Copies of the said Notices to be furnished by the Regional Director for Region 29, shall, after being signed by Respondent's representative, be posted immediately upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29, signed copies of said Notice for posting by Emery if it is willing, at places where it customarily posts notices to its employees.

1/ In the event that this Order is enforced by a Judgement of a United States Court of Appeals, there shall be substituted for the words "Posted by Order of the," the words "Posted pursuant to a Judgement of the United States Court of Appeals, Enforcing an Order of the."

(c) Notify in writing Emery that Respondent has no objection to its doing business with Containair.

(d) Notify the Regional Director for Region 29 in writing, within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

8. The United States Court of Appeals for any appropriate circuit may, upon application by the Board enter its judgment enforcing the order of the Board in the form set forth in paragraph 7 hereto. The Respondent waives all defenses to the entry of the judgment, provided that the judgment is in the words set forth in paragraph 7 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board's order after entry of the judgment only to the extent that it has not already done so.

9. This stipulation, together with the other documents constituting the record as described in paragraph 6 hereof, shall be filed with the Board. The stipulation is subject to the approval of the Board, and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the stipulation, the Respondent will immediately comply with the provisions of the order as set forth in paragraph 7 hereof.

10. This stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to it. It is understood that the signing of this stipulation by the Respondent does not constitute an admission that it has violated the Act.

Signed at

this 12th day of March 1974

LOCAL 295, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA
179-30 149 AVENUE
SPRINGFIELD GARDENS, NEW YORK

BY: /s/ James Costa, Pres.
(Name and Title)

Signed at

this day of 1974

CONTAINAIR SYSTEMS CORPORATION
145-80 228 STREET
SPRINGFIELD GARDENS, NEW YORK

BY: _____
(Name and Title)

APPROVAL BY GENERAL COUNSEL RECOMMENDED:

APPROVED:

/s/ Steven Davis
ATTORNEY, REGION 29
NATIONAL LABOR
RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

DATED: _____

"APPENDIX A"

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board

An Agency of the United States Government

WE WILL NOT threaten employees and supervisors of Containair Systems Corporation, or any other employer, to inflict injury, or threaten to inflict damage with an object to induce employees of Containair or any other employer to support and assist Local 295, or not to cross the picket line established by Local 295 at Containair's plant.

WE WILL NOT in any manner or by any means, including strikes, work stoppages, picketing, threats, orders, directions, instructions, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Emery Air Freight Corp., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or a refusal in the course of his employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, or in any manner or by any means, threaten, coerce or restrain Emery Air Freight Corp., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Emery Air Freight Corp., or any other person, to cease doing business with Containair Systems Corporation, or any other person.

WE WILL NOT in any like or related manner restrain or coerce employees of Containair or any other employer, in the exercise of the rights guaranteed by Section 7 of the Act.

LOCAL UNION 295, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DATED: _____ BY: _____
(Name and Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York, TEL: 596-3535; 596-5291.

RESPONDENT'S EXHIBIT NO. 1

NATIONAL LABOR RELATIONS BOARD
Region 29
16 Court Street
Brooklyn, New York 11241

June 28, 1974

Local 295, IBT
179-30 149th Ave.
Jamaica, New York 11434

Re: Containair Systems Corp.
Case No.: 29-CA-3770

Gentlemen:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

The investigation failed to establish that Containair Systems Corp., herein called the Employer, terminated the employment of Joseph Henry, Gladstone Marshall, Eddie Williams, Norman Davis, Ovidio Alvarado, Ben Nogueras, Humberto Lleras, Booker Huggins, Ken Lane, George Billips, Larry Billops, Lony Walker, Eddie Lunsford, John Williams, William Burnett, Lonnie Gentry, Luis Rodriguez, Claude Phipps, Alex Pigniot, Thomas Jakes, Frank White and Al Williams on or about March 14, 1974, in violation of the Act, as you allege in your charge. Rather, with respect to this allegation, the investigation disclosed that on February 21, 1974, the Employer laid off employees Larry Walker, John Williams and Louis Rodriguez because of a slackening in the volume of its business at that time. The investigation failed to disclose sufficient evidence that their layoffs were discriminatorily motivated. Thereafter, on February 22, 1974, the investigation discloses, you commenced a strike against the Employer herein in which all of the employees named in your charge participated. It was concluded from all the circumstances disclosed by the investigation that this strike was an economic strike. The strike continued until March 14, 1974, when it was terminated. Nine of the striking employees, who made unconditional offers to return to work, i.e., Ovidio Alvarada, Norman Davis, Joseph Henry, Booker Huggins, Humberto Lleres, Gladstone Marshall, Alex Pignoit, Frank White and Al Williams were reinstated by the Employer herein. Three other employees who also made unconditional offers to return to work, i.e.,

Eddie Lunsford, Eddie Williams and Claude Phipps, were denied reinstatement by the Employer. Lunsford and E. Williams were denied reinstatement on the ground that they engaged in serious misconduct during the strike and this is supported by the evidence disclosed during the investigation. Phipps was denied reinstatement on the ground that he had been permanently replaced prior to March 14, 1974, and the evidence adduced during the investigation tends to support this.

With respect to the remaining seven strikers; i.e., Lonnie Gentry, George Billops, Larry Billops, Ken Love, William Burnett, Thomas Jakes and Ben Nogueros, the investigation tends to establish that these employees failed to appear at the Employer's premises, as suggested to you by the Employer after you terminated your strike. Moreover, the Employer contends that Lonnie Gentry and George Billops are not entitled to reinstatement because they engaged in various misconduct during the strike and that Larry Billops and Ken Lane have been permanently replaced. The investigation tends to support these contentions.

The investigation also failed to establish that the Employer refused to recognize and bargain with you in violation of the Act, as further alleged in your charge. Rather, although the investigation disclosed that you claimed majority status and demanded recognition, the investigation further disclosed that the Employer lawfully insisted that you establish your majority through a Board conducted election and it does not appear that the Employer has engaged in any serious unfair labor practices which would destroy the possibility of a fair election.

Other allegations of your charge, particularly the allegation relating to the alleged discriminatory discharge of employee Richard Barth, are being processed further.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19) you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570, and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D.C. by the close of business on July 11, 1974. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request should be submitted

to me. SEE NOTICE ATTACHED HERETO RE APPEAL (TO CHARGING PARTY ONLY).

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Very truly yours,

/s/ Samuel M. Kaynard
Regional Director

CC: General Counsel
National Labor Relations Board
Washington, D.C. 20570

Containair Systems Corp.
145-80 228th Street
Springfield Gardens, N.Y. 11413

Kelley, Drye, Warren, Clark, Carr & Ellis, Esqs.
350 Park Ave.
New York, New York 10022
Att: Eugene D'Ablemont

Friedlander, Gaines, Rittenberg & Goetz, Esqs.
1140 Ave. of Americas
New York, New York 10036
Att: David Kramer, Esq.

RESPONDENT'S EXHIBIT NO. 7

Cases 29-CB-1729
29-CC-401

DECISION AND ORDER

Statement of the Cases

On March 12, 1974, Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, and the General Counsel of the National Labor Relations Board entered into a Stipulation, in settlement of the cases, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Rules and Regulations of the Board, and Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The aforesaid Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the said Stipulation. 1/

1/ Containair Systems Corporation, the Charging Party herein, by letter dated March 18, 1974, has objected to the Stipulation on the basis that (1) the Stipulation should not contain a clause in which the Respondent does not admit that it has violated the (Cont'd)

Upon the basis of the aforesaid Stipulation and the entire record in the proceeding, the Board makes the following:

1/ (Continued) Act; (2) the Stipulation and Notice should name the perpetrators of the alleged misconduct; and (3) that an evidentiary hearing should be conducted to clarify for the employees that their fellow employees' unlawful conduct is also prohibited, and to discover the extent of the alleged violations. Previous objections concerning the scope of the Order are no longer in issue following a modification of the Stipulation in response to such objections.

By letter dated March 22, 1974, the Regional Director responded to the Charging Party's objections and solicited further comment thereon. By letter dated April 1, 1974, the Charging Party submitted further objections to the settlement, basically on the same grounds. Thereafter, the Regional Director transmitted the Stipulation to the General Counsel with a recommendation for approval. On May 2, 1974, the General Counsel advised the Charging Party that he had reviewed the Stipulation and was satisfied that it fully and completely remedied the allegations of the complaint and, accordingly, he would recommend to the Board that the Stipulation be approved. The General Counsel further advised that the Charging Party had until May 14, 1974, to submit its position to the Board. On May 20, 1974, the Charging Party filed with the Board its correspondence dated March 18, and April 1, 1974, as a statement of its position, and requested a hearing on its objections.

With respect to the Charging Party's objections, the Regional Director informed the Charging Party that in view of the complete remedy for the allegations of the complaint provided by the Stipulation, no evidentiary hearing was necessary, and the General Counsel agreed. Concerning the nonadmissions provision, the General Counsel and the Regional Director advised the Charging Party that the provision did not affect the efficacy of the Board Order or Court judgment, and thus represented no impediment to enforcement thereof.

With regard to the Charging Party's objection that the Stipulation and Notice should state the names of the perpetrators of the alleged misconduct, we find that the term "agents" as used in the settlement and Notice encompass any persons engaged in violative conduct at the instance of the Respondent, and follows the allegations of the complaint. The employees of the Charging Party will be sufficiently protected by this provision, against (Cont'd)

Findings of Fact

1. The business of the Employers

Containair Systems Corporation, hereinafter called Containair, is a New York corporation maintaining its principal office and sole place of business at 145-80 228th Street, Springfield Gardens, New York, where it is engaged in the manufacture, sale and distribution of pilfer-proof containers and related products, and is engaged in the business of packing cargo for transport by air.

Containair, in the conduct of its business operations during the 1-year period ending March 1, 1974, its operations during said period being representative of its operations at all times material herein, purchased paper, corrugated paper and wood of a value in excess of $50,000, all of which were purchased directly from business concerns located outside the State of New York, and were shipped by such concerns from points outside the State of New York directly to Containair at its plant. During the same period Containair, at its plant, manufactured and sold finished products

1/ (Continued) future misconduct, if any, by persons acting at the direction of the Respondent. We normally do not specify the names of agents in our remedy, in large part because identification of such employees cannot be made with any degree of certainty and, in any event, we do not believe that stating the names of those agents allegedly involved would enhance the employees' protection.

Upon careful review of the Stipulation and the attached records and, in view of the recommendations of the Regional Director and the General Counsel, we are satisfied that the Stipulation fully remedies the allegations of the complaint, providing as it does for the entry of a formal Board Order and a consent Court Judgment. In these circumstances, we find that it will effectuate the policies of the Act to approve the Stipulation, and the Charging Party's objections are dismissed as lacking in merit.

of a value in excess of $50,000, all of which were sold and shipped to customers outside the State of New York.

Emery Air Freight Corporation, herein called Emery, is a New York corporation maintaining its principal office at 245 Park Avenue, New York, New York, and places of business at Building 88, John F. Kennedy International Airport, herein called the JFK facility, and at 182-17 149 Road, Laurelton, New York, herein called the Laurelton facility and various other places of business throughout the United States, where it is a common carrier engaged in the business of interstate air freight forwarding.

Emery, in the conduct of its business operations during the 1-year period ending March 1, 1974, its operations during said period being representative of its operations at all times material herein, derived gross revenues in excess of $50,000 from its interstate air freight forwarding services.

The Respondent admits, and we find, that Containair and Emery are persons engaged in commerce and in an industry affecting commerce within the meaning of Section 2(1), (6) and (7) and Section 8(b)(4) of the Act.

2. The labor organization involved

Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Stipulation, and the entire record in the proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

The Respondent, Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, agents, and representatives:

1. Cease and desist from:

(a) Threatening employees and supervisors of Containair Systems Corporation, herein called Containair, or any other employer, to inflict injury, or threatening to inflict damage, with an object to induce employees of Containair or any other employer to support and assist Local 295, or not to cross the picket line established by Local 295 at Containair's plant.

(b) In any like or related manner restraining or coercing employees of Containair, or any other employer, in the exercise of the rights guaranteed by Section 7 of the Act.

(c) In any manner or by any means, including strikes, work stoppages, picketing, threats, orders, directions, instructions, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Emery Air Freight Corporation, herein called Emery, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or a refusal in the course of his employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, or in any manner or by any means, threaten, coercing or restraining Emery or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Emery, or any other person, to cease doing business with Containair or any other person.

2. Take the following affirmative action which the National Labor Relations Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(a) Post immediately at its office at 179-30 149th Avenue, Springfield Gardens, New York, copies of the attached Notice to Members. 2/ Copies of the said Notices, on forms provided by the Regional Director for Region 29, shall after being signed by Respondent's representative, be posted immediately upon receipt thereof, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 29, signed copies of said Notice for posting by Containair and Emery, if they are willing, at places where they customarily post notices to their employees.

(c) Notify Emery, in writing, that Respondent has no objection to its doing business with Containair.

(d) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C., July 16, 1974.

John H. Fanning, Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

2/ In the event the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT threaten employees and supervisors of Containair Systems Corporation, or any other employer, to inflict injury, or threaten to inflict damage with an object to induce employees of Containair or any other employer to support and assist Local 295, or not to cross the picket line established by Local 295 at Containair's plant.

WE WILL NOT in any manner or by any means, including strikes, work stoppages, picketing, threats, orders, directions, instructions, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engage in, or induce or encourage any individual employed by Emery Air Freight Corp., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or a refusal in the course of his employment to use, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, or in any manner or by any means, threaten, coerce or restrain Emery Air Freight Corp., or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Emery Freight Corp., or any other person, to cease doing business with Containair Systems Corporation, or any other person.

WE WILL NOT in any like or related manner restrain or coerce employees of Containair or any other employer, in the exercise of the rights guaranteed by Section 7 of the Act.

LOCAL UNION 295, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York, Telephone 212-596-3535.

RESPONDENT'S EXHIBIT NO. 8

RAPIDFORMS
SPEED—INVOICE

INVOICE
No.

CONTAINAIR SYSTEMS CORPORATION
145-80 228th STREET • SPRINGFIELD GARDENS, N. Y. 11413
TELEPHONE: 276-6500 - JFK API 6-7097

INVOICE DATE
YOUR ORDER NO.
YOUR ORDER NO.
TERMS F.O.B.
SALESMAN
SHIPPED VIA

SHIPPED TO

QUANTITY	DESCRIPTION	PRICE	AMOUNT

RESP'S. EX. 8

FORM 1400 — RAPIDFORMS, PENNSAUKEN, N. J. 08109

RESPONDENT'S EXHIBIT NO. 9-A

INVOICE
No. C 8177

CONTAINAIR SYSTEMS CORPORATION
145-60 228th STREET • SPRINGFIELD GARDENS, N.Y. 11413
TELEPHONE: 276-0300 - JFK AP 8-7037

INVOICE DATE: Feb 26, 1974
OUR ORDER NO: 696 1/17/74 0370
YOUR ORDER NO: 158A-371A-3685
TERMS: net
F.O.B.: origin
SALESMAN:
SHIPPED VIA: EASTERN MAIL

GENERAL ELECTRIC
SPECIALTY MOTOR PROD. DEPT
1635 Broadway
Ft Wayne, Ind 46804

SHIPPED TO: General Electric 1600 Fairfield Ft Wayne, Ind att: G J Haggenjos

QUANTITY	DESCRIPTION	PRICE	AMOUNT
6 ea	COS/B CONTIANAIR multi w/wood bottom	$12.95/ea	$77.70
6 sets	SEALS	.30/set	1.80
			$79.50
	b/l 7472		

FORM 1400 REGENT FORMS PENNSAUKEN N.J. 08109

BEST COPY AVAILABLE

RESP. EX 9-A

RESPONDENT'S EXHIBIT NO. 9-B

61

STRAIGHT BILL OF LADING - SHORT FORM

ORIGINAL – NOT NEGOTIABLE

Shipper's No. 7472

CARRIER: EASTERN-Yellow FRT.

Carrier's No. C5177

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading.

At Springfield Gardens, N. Y. 2-8 19 74 From CONTAINAIR SYSTEMS CORP. AGENTS FOR 1588-3710-3685

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to the usual place of delivery at said destination if on its route, otherwise to deliver to another carrier on the route to said destination. It is hereby agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western and Illinois Freight Classifications in effect on the date hereof, if this is a rail or a rail water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to GENERAL ELECTRIC ATTN: Hoggenjos

Destination 1600 FAIRFIELD State County

(Mail or street address of consignee—For purposes of notification only.)

Delivery Address * FT. WAYNE, IND.

(*To be filled in only when shipper desires and governing tariffs provide for delivery thereat.)

Route

Delivering Carrier Car or Vehicle Initials No.

No. Packages	Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Sub. to Cor.)	Class or Rate	Ck. Col.
1	pallet 6 sets	120		
	Motor, flywheel, pinion, pinion gear or parts thereof, [illegible] in packages.	(1)	CH	EC

Subject to Section 7 of Conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

Charges advanced: $

All the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding (1) per

FEB 26 1974

CONTAINAIR SYSTEMS CORP. Shipper, Per [signature] Agent TRAILER Per

Permanent post-office address of shipper: 145-80 228th ST., SPRINGFIELD GARDENS, N.Y. 11413

RESP'S EX 9B

RESPONDENT'S EXHIBIT NO. 10-A

INVOICE

No. C 8303

CONTAINAIR SYSTEMS CORPORATION
145-60 228th STREET • SPRINGFIELD GARDENS, N. Y. 11413
TELEPHONE: 276-6500 - JFK API 6-7097

HOMES DANIEL
500 Saw Mill River Rd
Elmsford, NY

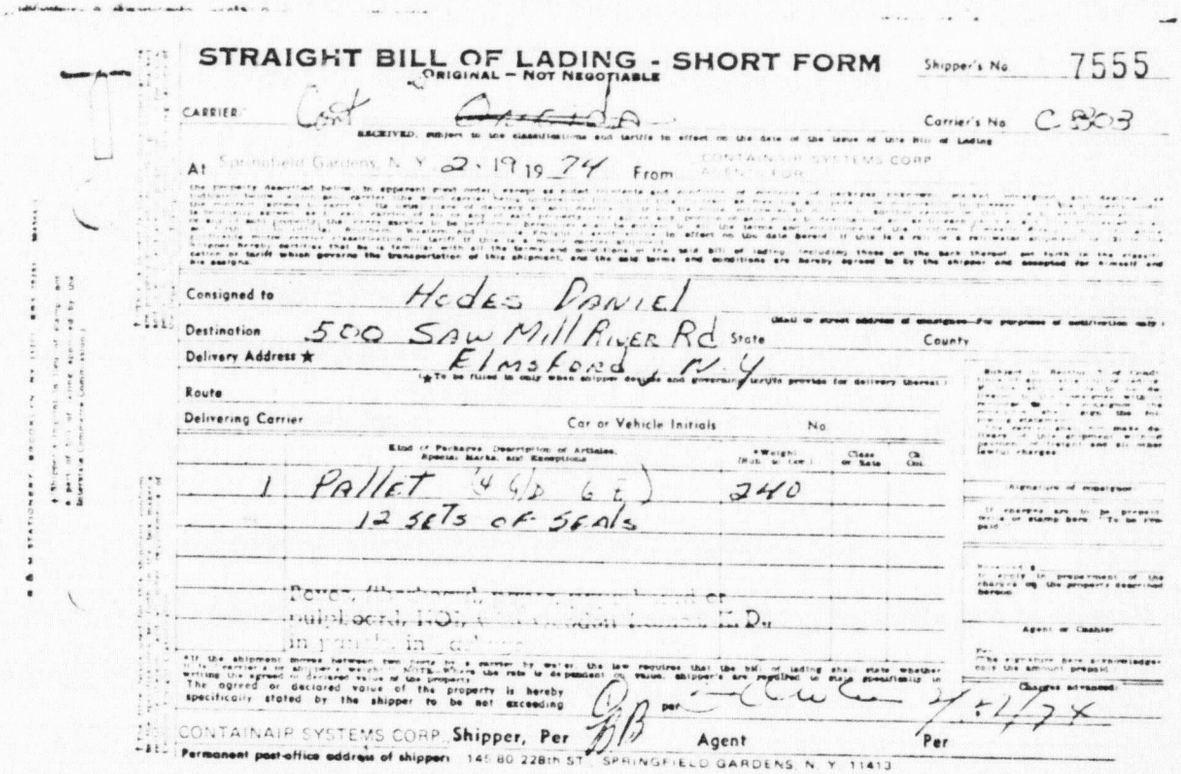
INVOICE DATE: Feb 27, 1974
OUR ORDER NO: 718 2/13/74 1041
YOUR ORDER NO: telecon Mr. Telep
TERMS: net F.O.B.: origin
SALESMAN:
SHIPPED VIA: Truck
SHIPPED TO:

QUANTITY	DESCRIPTION	PRICE	AMOUNT
4 ea	Q/D CONTAINAIR	$8.95/ea	$35.80
6 ea	COS/E " multi	9.95/ea	59.70
12 sets	SEALS	.30/set	3.60
			$99.10
	7% sales tax		6.94
			$106.04
	b/l 7555		

FORM 1400 REGENT FORMS PENNSAUKEN N J 08109

RESP. EX 10A

RESPONDENT'S EXHIBIT NO. 10-B



STRAIGHT BILL OF LADING - SHORT FORM
ORIGINAL – NOT NEGOTIABLE

Shipper's No. 7555

CARRIER Cent [illegible]

Carrier's No. C [illegible]3

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

At Springfield Gardens, N. Y. 2-19-74 From CONTAINAIR SYSTEMS CORP AGENT FOR

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governing the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to Hodes Daniel

Destination 500 Saw Mill River Rd (Mail or street address of consignee—For purposes of notification only.) State County

Delivery Address ★ Elmsford N. Y.

★To be filled in only when shipper desires and governing tariffs provides for delivery thereto.

Route

Delivering Carrier Car or Vehicle Initials No.

Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Subj. to Corr.)	Class or Rate	Check Col.
1 PALLET (4 G/D 6 E)	240		
12 SETS OF SEALS			

Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

the property described above, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governing the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to

Destination (Mail or street address of consignee—For purposes of notification only.) State County

Delivery Address ★

★To be filled in only when shipper desires and governing tariffs provides for delivery thereto.

Route

Delivering Carrier Car or Vehicle Initials No.

Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Subj. to Corr.)	Class or Rate	Check Col.

Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

the property described above, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is agreed, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governing the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to

Destination (Mail or street address of consignee—For purposes of notification only.) State County

Delivery Address ★

★To be filled in only when shipper desires and governing tariffs provides for delivery thereto.

Route

Delivering Carrier Car or Vehicle Initials No.

Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Subj. to Corr.)	Class or Rate	Check Col.

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight. Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding [illegible] per [illegible]

Charges advanced:

CONTAINAIR SYSTEMS CORP. Shipper, Per [illegible] Agent Per

Permanent post-office address of shipper: 145 80 228th ST SPRINGFIELD GARDENS N. Y. 11413

RESP EX. 10B

RESPONDENT'S EXHIBIT NO. 11-A

INVOICE

No. C 8295

CONTAINAIR SYSTEMS CORPORATION
145-08 228th STREET • SPRINGFIELD GARDENS, N.Y. 11413
TELEPHONE: 276-6500 - JFK AP1 6-7097

INVOICE DATE: Feb 27, 1974

OUR ORDER NO.: 159 b.o. 8216

YOUR ORDER NO.: Chuck Summer

TERMS: not

F.O.B.: origin

SALESMAN:

SHIPPED VIA: Containair

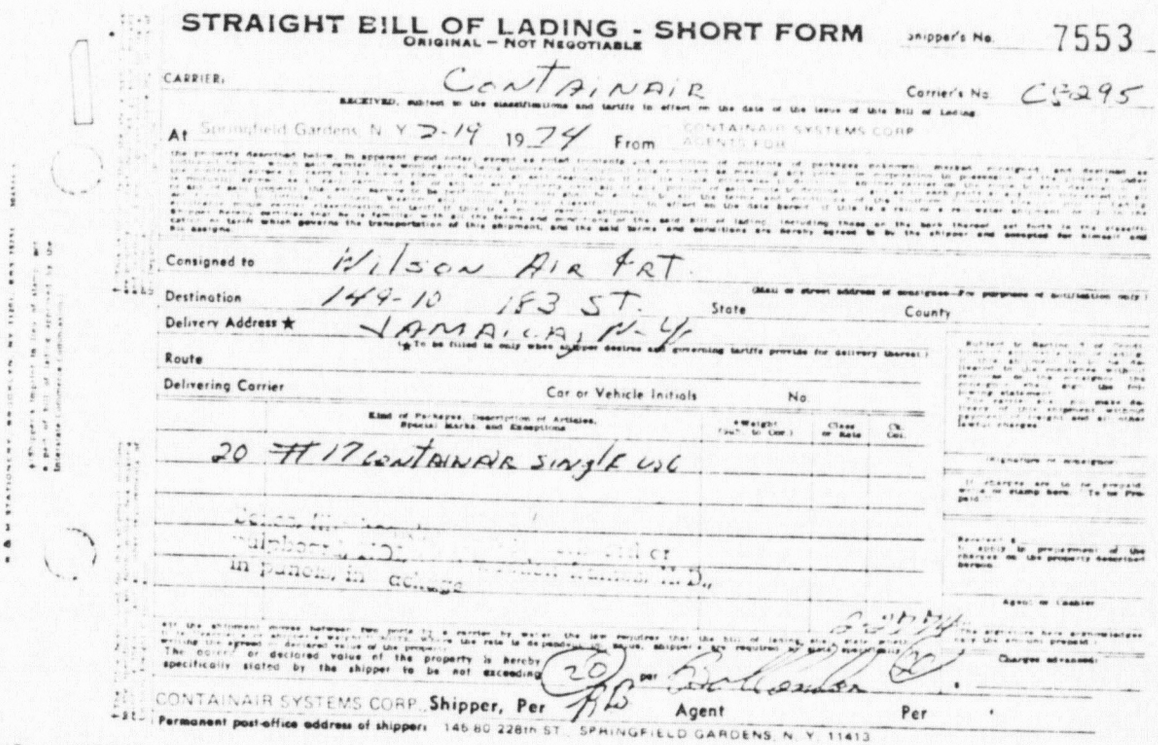
SHIP TO:
WILSON AIR FRT
149-10 103 St
Jamaica, NY

QUANTITY	DESCRIPTION	PRICE	AMOUNT
20 ea	717 CONTAINAIR single use	$8.95/ea	$179.00
	7% sales tax		12.53
			$191.53
	b/l 7553		

FORM 1400 REGENT FORMS PENNSAUKEN N.J. 08109

RESP. EX. 11A

RESPONDENT'S EXHIBIT NO. 11-B



STRAIGHT BILL OF LADING - SHORT FORM
ORIGINAL – NOT NEGOTIABLE

Shipper's No. 7553

CARRIER: CONTAINAIR Carrier's No. C-295

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

At Springfield Gardens N.Y. 2-14 1974 From CONTAINAIR SYSTEMS CORP AGENTS FOR

Consigned to WILSON AIR FRT

Destination 144-10 183 ST. State County

Delivery Address ★ JAMAICA N.Y.

(★To be filled in only when shipper desires and governing tariffs provide for delivery thereof.)

Route

Delivering Carrier Car or Vehicle Initials No.

Kind of Packages, Description of Articles, Special Marks and Exceptions	*Weight (Subject to Corr.)	Class or Rate	Check Col.
20 FT 17 CONTAINAIR SINGLE USE			

Agent or Cashier

Per

Charges advanced:

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding 20 per

CONTAINAIR SYSTEMS CORP. Shipper, Per Agent Per

Permanent post-office address of shipper: 146-80 228th ST. SPRINGFIELD GARDENS, N.Y. 11413

RESP. EX. 11B

RESPONDENT'S EXHIBIT NO. 12

66

BEST COPY AVAILABLE

INVOICE

CANADIAN SYSTEMS CORPORATION

[illegible]

No. C 4275

INVOICE DATE	March 5, 1974
OUR ORDER NO.	400
YOUR ORDER NO.	MA1473-C(94602)
TERMS	net 60 Days
SALESMAN	
SHIPPED VIA	truck

STEIPER GOULD OF MASS
570 Hillside Av
Needham Hgts, Ma 02094

SOLD TO
c/o 117 East Spitbrook Rd Nashua, N H

PPD. OR COLL.

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	C03 CONTALAIR	$115.00/ea	$115.00
1t	SCALS	.30/set	.30
			$115.30
		less 10%	
	MDSE RECEIVED - NO BILL OF LADING GIVEN OR FOUND		
	5/1		

Resp. Ex. 12

RESPONDENT'S EXHIBIT NO. 13

THIS MEMORANDUM (An acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.)

Shipper's No. 7522

CARRIER:

Carrier's No. C-8338

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property in the Original Bill of Lading.

At Springfield Gardens, N. Y., 19__ From CONTAINAIR SYSTEMS CORP. AGENTS FOR

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Official, Southern, Western and Illinois Freight Classifications in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

Consigned to

Destination (Main street address of consignee—for purposes of notification only.)

Delivery Address ★ County

Route

(★To be filled in only when shipper desires and governing tariffs provide for delivery thereof.)

Delivering Carrier Car or Vehicle Initials No.

	Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Sub. to Cor.)	Class or Rate	Ck. Col.
1	Bundle of 1173 ★17 (23 sets each)			
	Double Decker			

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight." NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ^.

Per

Subject to Section 7 of conditions of applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per (The signature here acknowledges only the amount prepaid.)

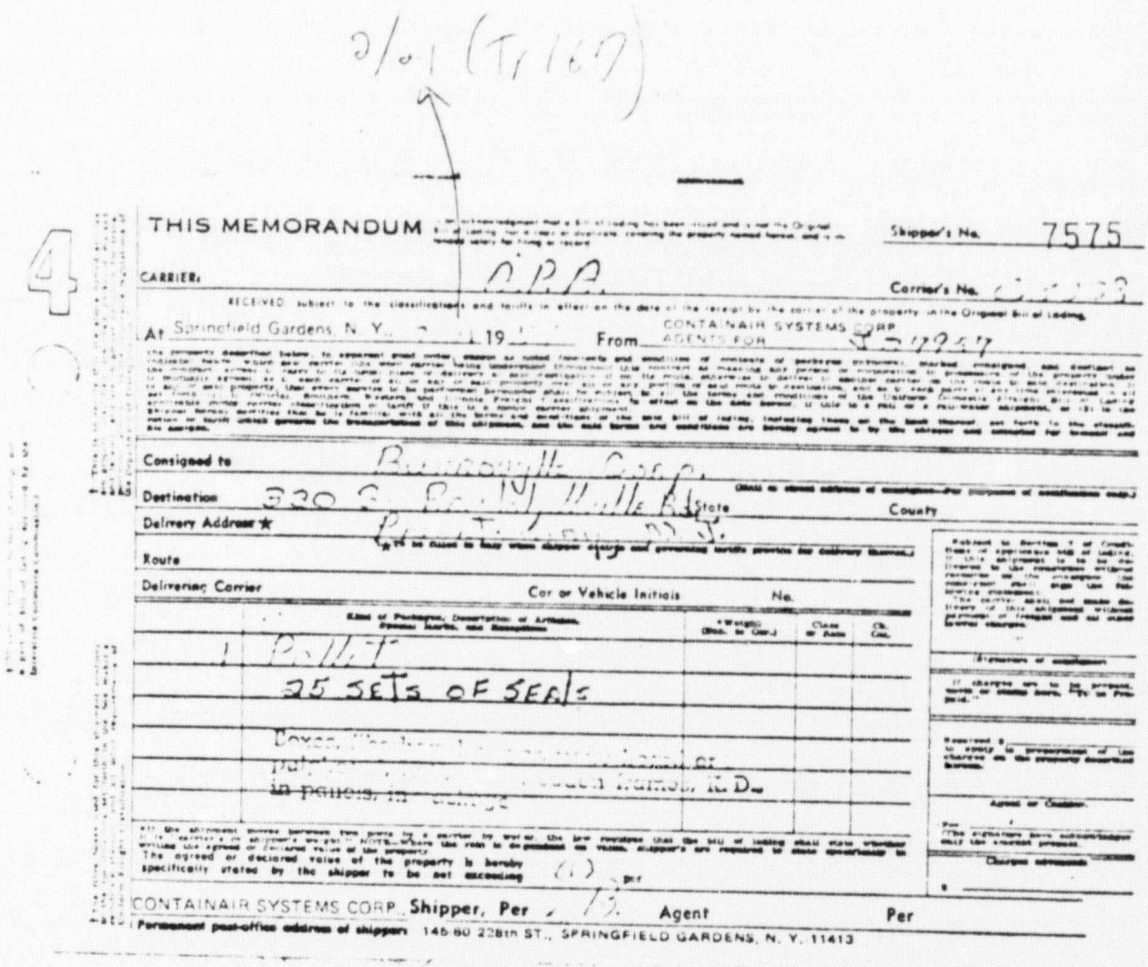
Charges advanced: $

CONTAINAIR SYSTEMS CORP., Shipper, Per Agent Per

Permanent post-office address of shipper: 145-80 228th ST., SPRINGFIELD GARDENS, N. Y. 11413

RESP 13

RESPONDENT'S EXHIBIT NO. 14



THIS MEMORANDUM

Shipper's No. 7575

CARRIER: A.P.A.

Carrier's No.

RECEIVED subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property in the Original Bill of Lading.

At Springfield Gardens, N. Y. 19 From CONTAINAIR SYSTEMS CORP AGENTS FOR

Consigned to

Destination 320 S. Rd. Mt. Holly

State County

Delivery Address ★

Route

Delivering Carrier Car or Vehicle Initials No.

Kind of Packages, Description of Articles, Special Marks, and Exceptions	*Weight (Subj. to Corr.)	Class or Rate	Check Col.
1 Pallet			
25 SETS OF SEALS			

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight. *Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding ($) per

CONTAINAIR SYSTEMS CORP. Shipper, Per Agent Per

Permanent post-office address of shipper: 146-80 228th ST., SPRINGFIELD GARDENS, N. Y. 11413

BEST COPY AVAILABLE

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

CONTAINAIR SYSTEMS CORPORATION	
and	Case No. 29-CA-3770
LOCAL 295, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	

ORDER

1. The above entitled matter having been adjourned, on September 13, 1974, on motion of Respondent, to afford Respondent opportunity to prepare rebuttal testimony, the hearing to resume on October 3, 1974, and

2. Respondent, by counsel, having advised the undersigned on October 1, 1974, that it had no further evidence to present and consented to the closing of the record,

IT IS HEREBY ORDERED:

(1) That the Record in the above-entitled matter be and it is hereby closed.

(2) That the date for receipt of briefs in Washington, D.C. in this matter is November 4, 1974.

/s/ SIDNEY J. BARBAN
Sidney J. Barban
Administrative Law Judge

Dated: October 3, 1974

[EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS]

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

In the Matter of:	
CONTAINAIR SYSTEMS CORPORATION	
and	Case No. 29-CA-3770
LOCAL 295, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	

16 Court Street
Brooklyn, New York
September 12, 1974

The above entitled matter came on for hearing, pursuant to Notice, at 11:00 A. M.

BEFORE:

SIDNEY J. BARBAN, Administrative Law Judge

APPEARANCES:

STEVEN DAVIS, ESQ.	16 Court Street, Brooklyn, New York, appearing on behalf of General Counsel
IRVING BRAND, ESQ.	Kelley, Drye, Warren, Clark, Carr and Ellis, Esqs., 350 Park Avenue, New York, New York, appearing on behalf of the Company
DAVID KRAMER, ESQ.	Friedlander, Gaines, Cohen, Rosenthal & Rosenberg, Esqs., 1140 Avenue of the Americas, New York, New York, appearing on behalf of Local 295.

* * * * *

PROCEEDINGS

JUDGE BARBAN: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Containair Systems Corporation, case number 29-CA-3770.

The Administrative Law Judge presiding at this hearing is Sidney J. Barban.

At this time I would like to take the appearances from the parties.

For the General Counsel.

MR. DAVIS: Steven Davis, counsel for the General Counsel, 16 Court Street, Brooklyn, New York.

JUDGE BARBAN: For the Respondent?

MR. BRAND: Kelley, Drye, Warren, Clark, Carr and Ellis by Irving Brand, 350 Park Avenue, New York, New York 10022.

JUDGE BARBAN: And for the charging party?

MR. KRAMER: Friedlander, Gaines, Cohen, Rosenthal and Rosenberg, by David Kramer, 1140 Avenue of the Americas, New York, New York 10036.

* * * * *

JUDGE BARBAN: Mr. Brand, I think I would like to hear from you briefly and simply as to the Respondent's position.

MR. BRAND: Well, just very briefly it is the Respondent's position certainly fully set forth in our answer that Respondent did not at anytime refuse to reinstate Mr. Barth for unlawful or improper reasons.

He is not back at work for us for good and sufficient justification unrelated to any kind of union or protected or concerted activities that he engaged in.

8 One of the things that are, and most serious, the problem that relates to misconduct in the performance negligent or willful misperformance of his job duties which did not come to the attention of the company until after the strike began, and for which in the normal course of its business operations the Respondent would have discharged Mr. Barth had it known about it prior to the beginning of that strike.

* * * * *

10 RICHARD BARTH

called as a witness, having been first duly sworn in by Judge Barban, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Davis) Mr. Barth, would you give your name and address to the Reporter, please? A. Richard Barth, 258-15 147th Avenue, Rosedale, New York.

Q. Mr. Barth, have you ever been employed by Containair Systems Corporation? A. Yes.

Q. When did you start working there? A. August 29, 1972.

Q. What type of work did you do when you began working there? A. Assembly work.

Q. Could you explain what you mean by assembly work? A. Well, putting together skids and the tops for the containers.

11 Q. How long did you work as an assembly worker? A. I guess a year.

Q. What happened at that time? A. Well, after that they laid off some guys and they moved me up to shipping clerk.

Q. What was your job at that time? A. Making out bills of lading, driving the fork lift, loading and unloading trucks, and I did stocking too.

Q. Do you know your job title at that time? A. Well, I didn't know, but I guess it was shipping clerk.

Q. How long did you work as a shipping clerk? A. Somewhere between four and six months, I guess, something like that, four months.

Q. Can you tell us when you first heard about Local 295? A. Well, I think it was a Wednesday, February 20th.

Q. What happened at that time? A. Well, a couple of guys went down and they were talking to Mark Davidoff.

Q. Do you know who Mark Davidoff is? A. He is the secretary-treasurer.

Q. Of what? A. Of Local 295.

Q. When you say they went down, do you know where they
12 went? A. To the union hall.

Q. What happened there, if you know? A. Well, they got cards and they came back and asked us if we wanted to go into a union.

Q. What did you reply? A. Yes.

Q. What happened after that with regard to the union? A. Well, everybody was down there, we filled out -- they took them home and they filled out the cards.

Some guys filled them out at the union hall, and I took one home and brought it in the next day.

Q. Do you remember when you went down there to the union? A. Right, it was a Thursday, February 21st.

Q. Were you given a card at that time, an authorization card? A. I think it was a Wednesday I got the card and I brought it to work Thursday.

* * * * *

Q. Mr. Barth, I believe you were telling us what happened after you gave the card to Mr. Williams? A. Well, I think in the afternoon he took it down to Local 295 and then that was that.

Q. What happened after that? A. Well, the next day I came into work.

Q. What time did you come in? A. 8:00 o'clock.

Q. A. M. ? A. 8:00 o'clock in the morning, and I started work, and a couple of trucks were inside so I started loading them and I went to get more papers in the office.

Q. What types of papers? A. Bills of lading.

Q. Go ahead. A. The invoices, really, that is what they call them, invoice, and I went to make them out and everybody was outside.

15 Q. When you say everybody, who do you mean? A. Almost the people in the place, the shop, except for a few of the bosses.

Q. Could you give us their names? A. Well, there was Bobby Gregorio was there.

Q. Could you tell us whether these people were inside or outside of the shop? A. These people were inside the shop.

Q. Gregorio, who else? A. George Estrada.

Q. Do you know who Mr. Estrada is? A. Excuse me?

Q. Do you know what Mr. Estrada's title is? A. Yes, general manager and vice president.

Q. Who else? A. There was a few workers on the side, I don't know who they were.

Q. Where were they, inside or outside? A. Inside.

Q. Who was outside? A. Well, Eddie Lunsford, Al Williams, Norman Davis, Eddie Williams, bunch of other guys. I don't know everybody's names.

Q. About how many were outside? A. Say about 20.

16 Q. What do these people do that were outside?

A. They work, some of them work on the assembly line and they put the skids together.

Q. They were employees? A. Right.

Q. What happened at that time? A. Well, we were all waiting outside.

Mickey Hunt was out there.

Q. Who is Mickey Hunt? A. He is a delegate for the union.

We were outside and we stood out there and we were on strike.

Q. When you say you were on strike, what did you do?

A. We were picketing, walking back and forth.

Q. Did you do that? A. Yes.

Q. Did you carry a sign? A. Yes.

Q. Do you recall what it said? A. On strike, Local 295. I'm not too sure what it said.

Q. How long did you picket? A. Till March 14th.

Q. How many days during the week did you picket?

A. Everyday except Saturday and Sunday.

17 Q. From what hour to what hour did you picket on each day?

A. From about 8 to 5, 5:30.

Q. What was the last day that you picketed? A. March 13th.

Q. During the time that you picketed from February 22nd to March 13th, did you see Mr. Estrada walk into the plant or walk out of the plant? A. Yes, I seen him many times.

Q. What happened after the picketing ended? A. Well, the next day a few of us went into -- into talk to George, we wanted our jobs back.

Q. When you say the next day, what day is that? A. March 14th.

Q. And by George, who are you referring to? A. George Estrada.

Q. You say, "A few of us". Who do you mean?
A. Well, me, Al Williams, Lonnie Gentry, Norman Davis, Claude Phipps, Booker Huggins and Eddie Williams.

Q. Who happened then? A. Well, George said he had to talk to his lawyer and he said wait outside and he will let us know.

Q. What time was this that you spoke to him? A. About nine in the morning. He told us to come back at 10:00 o'clock.

18 Q. What was it exactly that was said to Mr. Estrada at that time, if you recall? A. We just went in there and asked if we could have our jobs back.

Q. What did Mr. Estrada reply? A. He had to talk to his lawyer.

Q. Then what happened? A. So he told us to wait outside.

Q. What did you do then? A. About an hour later we came back in and he said he still hadn't called, so he told us to call at night, call up after work hours.

Q. What did you do then? A. I called up and he told me to come in Friday morning, March 15th.

Q. Who did you speak to when you called? A. George Estrada.

Q. Did you say anything in reply to him? A. I just asked him if he heard anything. He said to come in tomorrow and "We will talk to you".

Q. What happened after that? A. Well, I came in the next morning.

Q. What time? A. 8:00 o'clock, and a few of us there, Al Williams, Claude Phipps, Norman Davis, Booker Huggins. That is

19 about it.

Q. What happened at that time? A. Well, he took one of us in at a time and he talked to us.

Q. Who did you speak to? A. Mr. Kupersmit, George Estrada and John Becker.

Q. Do you know who John Becker is? A. Salesman, I guess.

Q. Was anyone else present besides those gentlemen and yourself? A. No.

Q. Where did you speak to them? A. In George Estrada's office.

Q. What did they say to you and what did you say to them? A. George was the only one who talked.

He said, "We have charges brought up against you so you have to wait until the hearing comes up."

Q. Did he say anything about taking you back or not taking you back? A. No, he just said, "You have to wait for a hearing".

Q. What did you do then?

Did you say anything to them? A. I said okay and I left.

Q. Did you have any other conversation with the company,
20 company supervisors after that? A. No.

Q. After that time, did you receive a letter or telegram requesting that you come back? A. No.

Q. Receive any communication at all from the company? A. No.

Q. Did you call the company after that or speak to any company supervisors? A. No, not after that.

* * * * *

21 CROSS EXAMINATION

Q. (By Mr. Brand) Mr. Barth, you said that you had worked at Containair? A. Right.

Q. Would you say that you started as an assembly worker? A. Right.

Q. What actually did you do as an assembly worker?
22 A. Well, I made tops for the containers and then I worked on the assembly line putting the containers together.

Q. What is involved in that process? A. You have to put filter proof clips on, tear stops. That is about it.

Then you staple it to the container.

Q. You changed jobs after your assembly work? A. Right.

Q. What did you do subsequent to that? A. Shipping clerk, I made out the bills of lading.

Q. How did you do that? A. Well, they gave me an invoice from the office.

I wrote out the bill of lading.

Q. Were you also responsible for picking up goods? A. Yes.

Q. When did you start performing these duties? A. About a year after I started, I think.

Q. About a year? A. Right.

Q. Could it have been in January, 1974? A. No, it wasn't.

Q. You are certain about that? A. Yes.

23 Q. It was in August? A. I'd say about October.

Q. October? A. Yes.

Q. Were you informed by the company that you were going to be made shipping clerk in October? A. John Becker came over to me and told me, "You are going to have a different job."

Q. What did he say to you? A. He just gave me the job and I just started.

Q. He didn't tell you what kind of job you were going to have? A. I knew what to do already.

Q. How did you know that? A. Because somebody else had it before and I knew what happened.

Q. Who had the job before you? A. Bob Houk.

Q. Did you work closely with Houk at all prior to becoming a shipping clerk? A. No, but I knew what the whole procedure was.

Q. Did you receive any training? A. Excuse me?

Q. Did you receive any training at all while you performed, when you took over the shipping clerk responsibility?

24 A. A little.

Q. Who trained you? A. Bobby Gregorio.

Q. Anybody else train you? A. No, that was about it.

Q. What did Bobby Gregorio show you to do? A. How to make some of the bills of lading out.

That is about it. Loading trucks. I knew how to do that.

Q. Mr. Estrada work with you too? A. No, I already knew it already.

Q. At no time he spent anytime showing you what to do in training you? A. No.

Q. When did you start making out bills of lading? A. October, late October.

Q. Soon as you started loading trucks and doing more of the other activities that you talked about? A. Right.

Q. Are you familiar with a person by the name of Danny Kahan? A. Yes.

Q. Who is he? A. He had the job of making out the bills of lading before me.

25 Q. When did you start performing his function? A. I started along with him, the same time with him.

Q. You started along with him? A. Well, he was leaving so I took over.

Q. You took it over after he left? A. Right, I was doing it all along really for a while with him at the same time, but he was still there.

Q. You mean physically with him, both of you sat down together to do it? A. No, I did it. He didn't really do anything.

Q. Did you submit the bills of lading to him? A. Yes, sometimes.

Q. Did he review your work? A. No.

Q. You stated that on February 22nd you and about 20 other people, 20 other employees of Containair went out on strike? A. Right.

Q. You also stated that you continued picketing everyday from the 22nd except for Saturday and Sundays until, I believe you said, the last day was March 13th? A. Right.

Q. Were you out there alone? A. No, there was a few people with me.

Q. Who else picketed with you during this whole time?

26 A. Well, Al Williams, Eddie Lunsford, Lonnie Gentry, Booker Huggins, a few more.

I don't know their names.

Q. Al Williams, Eddie Williams, Eddie Lunsford, Booker Huggins? A. Right, Claude Phipps.

Q. Did they picket with you, all of these people picket with you through the 13th of March? A. Right.

Q. They were there everyday? A. Not everyday. Some of them didn't come everyday.

Q. How often did Al Williams come? A. He was there a few times every week.

Q. What about Booker Huggins, how often did he picket during that period? A. He came a few times a week too.

Q. Do you know what Al Williams is doing today? A. I think he is working there now, driving a truck.

Q. Working where? When you say there -- A. Containair Systems.

Q. What about Booker Huggins? A. I think he is there, too. Containair Systems.

* * * * *

28 Q. On March 14th you testified that you walked into Containair's premises with other employees the first time?
A. Al Williams, Norman Davis, Booker Huggins, Claude Phipps.

Q. What time was this that you first came in? A. 8:00 o'clock in the morning.

Q. Where did you go on Containair's premises?

Where was it that you first walked in? A. George Estrada's office, on the side.

Q. Was anybody in the office besides Mr. Estrada?
A. Yes, Mr. Supersmit and John Becker.

Q. Who said what to whom at that time?

Can you tell me who spoke? A. George spoke to me, George Estrada.

And he said, "We have charges against you and we can't bring you back right now until the hearing comes up."

Q. At that time, did Al Williams say anything? A. I wasn't with him at the time. He went in by himself.

29 Q. You testified that in your first meeting on 3/14, March 14th, you walked into Mr. Estrada's office with Al Williams, Lonnie Gentry, Norman Davis, Claude Phipps, Booker Huggins and Eddie Williams? A. What day was this?

Q. March 14th? A. We didn't all walk in at the same time.

Q. On March 14th? A. No.

Q. Tell me what happened then. A. March 14th?

Q. Yes, tell me when you all walked in at the same time?
A. Well, I don't know if you said it right twice, I don't know if this was it.

Q. On March 14th, when you walked in in the morning you listed names, Al Williams, Lonnie Gentry, Norman Davis, Claude Phipps, Booker Huggins and Eddie Williams. A. This is March 14th, right?

Q. Yes, you just told me -- A. We all walked in.

Q. You all walked in? A. Yes. I thought you said March 15th.

Q. You just testified and we went over this a few times, I said March 14th and you said that you all went in and you only spoke separately -- A. But before this you were talking about March 15th when I went into the office.

30 Q. I never spoke about March 15th.

MR. DAVIS: I'm going to object at this point, your Honor, and request that we get a question from counsel and then an answer from the witness.

I think the colloquy is unnecessary.

JUDGE BARBAN: Mr. Brand, let us have the question, please.

Q. In the meeting in Mr. Estrada's office on March 14th? A. That was not in Mr. Estrada's office.

Q. It was not in Mr. Estrada's office? A. No.

Q. Where was that meeting? A. That was March 15th in Mr. Estrada's office.

Q. Where was the meeting on March 14th? A. In the main office.

Q. Who was present? A. The guys you mentioned before, Booker Huggins, Lonnie Gentry, Al Williams, Claude Phipps and --

Q. Anybody else? A. I don't remember right now.

Q. Was anybody present who was not then on strike in the

31 main office? A. The girls from the office, but I don't know all their names.

Bess -- I don't know who else was in there.

Q. Mr. Estrada? A. Yes.

Q. Mr. Kupersmit there? A. No.

Q. Was Mr. Becker there? A. No.

Q. Who said what to whom on that occasion? A. Al Williams asked George Estrada if we could have our jobs back.

Q. Were those Al Williams exact words? A. He asked for all of us, could we all have our jobs back and George said, George Estrada said he had to call his lawyer and he told us to wait outside.

Q. Could you recall now the exact words that Mr. Williams used? A. No, I don't.

Q. Did you make any comments during this meeting? A. No.

Q. Did Booker Huggins make any comments during this meeting? A. Not that I know of.

Q. Norman Davis make any comments during this meeting?

32 A. Not that I know of.

Q. Claude Phipps? A. No.

Q. Lonnie Gentry? A. Yes, he asked for his job back too.

Q. What did Lonnie Gentry say? A. I'm not too sure. He just said he wanted his job back, if he had a job.

Q. You are not sure those were his exact words? A. Right, I'm not sure.

Q. Did Al Williams ask for everybody's job together as a group? A. Yes, he did.

Q. What did Mr. Estrada say? A. He says he is going to talk to his lawyer and told us to wait outside.

Q. How long did that meeting last? A. Just a couple of minutes.

Q. What time did you say it began again? A. 8:00 o'clock in the morning.

Q. Was there anybody else at this meeting from the employees aside from Booker Huggins, yourself, Norman Davis, Claude Phipps and Lonnie Gentry and Al Williams?

Was anybody else there at this meeting? A. Not that I know of.

33 Q. Mr. Barth, I would like to read to you from Paragraph 7 of your affidavit of May 16, 1974.

MR. DAVIS: Your Honor, I'm going to object at this time. The affidavit speaks for itself.

First, there is no showing that the witness needs his recollection refreshed and if counsel wants to put in the affidavit I would have no objection.

Thirdly, I think in all fairness the witness should be shown the statement before he is questioned from it.

JUDGE BARBAN: Well, I agree. The witness may see the affidavit if he is going to be questioned about it.

The other matters that you raised, however, don't properly apply to cross examination.

I have to assume, Mr. Brand, that you have in mind impeachment of the witness.

MR. BRAND: That is correct.

JUDGE BARBAN: All right, you can show the witness the particular thing you wish him to see.

Q. I show you Paragraph 7. Did you have an opportunity to read that, Mr. Barth? A. Yes.

Q. Paragraph 7 states that on 3/14/74 "Me and Al Williams, Claude Phipps, Brooker Huggins, Norman Davis, Eddie Lunsford

34 and Lonnie Gentry, we arrived at about 8:00 A. M. We all went into the plant at the same time and spoke to George Estrada."

I want to just ask you whether there were any other people, other employees who talked to Mr. Estrada aside from the named

employees that I listed and you said no and that list did not include Mr. Lunsford name?

Which is correct? Is your affidavit correct or is your testimony today correct? A. I'm not sure all the guys in there. I can't tell you that.

That is about it.

JUDGE BARBAN: The question is do you remember today whether or not Mr. Lunsford was with you?

THE WITNESS: Yes, I think he was.

Q. So that you were wrong a moment ago when you didn't tell us that Mr. Lunsford was there?

MR. DAVIS: Objected to, sir.

JUDGE BARBAN: The objection is overruled.

The witness' answer will stand.

THE WITNESS: I didn't know.

Q. You say that Eddie Lunsford was there too? A. Yes.

Q. Did Eddie Lunsford do any talking at that meeting?

A. Not that I know of.

35 Q. What did you do after you concluded that meeting?

A. Waited outside.

MR. BRAND: Off the record a moment.

JUDGE BARBAN: Off the record.

(Discussion off the record.)

JUDGE BARBAN: On the record.

Q. Now, you said you went outside after the meeting.

What did you do outside? A. Waited around.

Q. Whereabouts? A. Near my car.

Q. Where was that parked? A. Across the street.

Q. Across the street from the main entrance of Containair?

A. Not the main entrance, a little off to the side.

Q. All you waited inside your car or outside your car?

A. They waited around. I think somebody else had their own car.

Q. What did you do besides waiting around?

Did you do anything?

How long did you wait out there, outside? A. Until about 10:00 o'clock.

36 Q. What did you do at that time? A. Walked back in again.

Q. Who went in? A. Al Williams, Lonnie Gentry, and I think Claude Phipps.

There was only a few of us at this time.

Q. Did you go in too? A. Yes.

Q. So just four of you went in the second time? A. Yes.

Q. Where did you go inside? A. The same place we went before, the main office.

Q. Who was in the main office at that time? A. George Estrada, I guess Bess. I don't know who else.

Q. Were there other people there at that time? A. I'm not sure.

Q. Who said what at that time? A. I don't remember who said it, but I think we came back and asked if we had our jobs and he said he still hadn't got in contact with his lawyer.

Q. You don't recall who made that statement? A. No. I guess it was Al Williams. I'm not sure.

JUDGE BARBAN: Who was the he who said he hadn't gotten in contact with his lawyer again?

THE WITNESS: George Estrada.

37 MR. BRAND: Read back those last couple of lines.

(Whereupon, the pertinent portions of the record were read by the Reporter.)

Q. Mr. Estrada said he still hadn't got in contact with his lawyer at that time? A. Right.

Q. What happened after Mr. Estrada made that statement? A. He told us to go home and call back after working hours, about 4:30 after that.

Q. What did you all do at that time? A. After he told us that?

I went back home.

Q. You went back home? A. Yes.

Q. Were you at Containair's premises at all that day, the rest of the day? A. No, I just went home.

Q. Did you do anything further that day in terms of having conversations with anybody at Containair? A. No, I didn't.

Q. You didn't call back that afternoon? A. I called back at 4:30.

Q. Did you speak to anybody at this time? A. Well, I think Bess answered the phone and then she got George Estrada.

38 Q. What happened after that? A. He told me to come in Friday morning, March 15th at 8:00 o'clock in the morning.

Q. At 8:15? Is that what you said? A. 8:00 o'clock.

Q. 8:00 o'clock is the time that he said you were to come in? A. At 8:00 o'clock.

Q. He said to come in alone or with anybody else? A. By myself.

Q. Mr. Estrada say anything else to you in the course of that conversation? A. No, he didn't.

Q. What did you do after that? A. After that I talked to him on the phone.

Q. Yes? A. I stayed home.

Q. Anything happen the next day? A. I went down there at 8:00 o'clock in the morning.

Q. You went down where? A. To Containair Systems.

Q. What time? A. 8:00 o'clock.

Q. Did you go down alone? A. Yes.

39 Q. Where did you go once you got to the premises? A. I waited at the side door and George told us he would get to us in a little while.

Q. He said he would get to you in a little while? A. Yes, there were a few more people there.

Q. Who were those people? A. Al Williams, Booker Huggins, Norman Davis, Claude Phipps. That's all I can remember right now.

Q. You say there may have been other people there? A. They might have been, I'm not sure.

Q. What happened after you waited a while? A. Well, took us each at a time into George Estrada's office and Mr. Kupersmit was there.

Q. Who took you? A. He called us in one at a time.

Q. Who was the he? A. George Estrada.

Q. Who was the first called? A. The first one called?

Q. Yes. You were waiting outside, but with some other people? A. I don't remember.

Q. Who called you specifically? A. George Estrada.

40 Q. What did he say to you? A. He called me in and then they were talking, I guess about me, and --

Q. Who was talking about you? A. Mr. Kupersmit and John Becker.

Q. Where were they talking? A. In George Estrada's office.

Q. What was said? Who said what? A. George talked to me and he said he couldn't take me back because they had charges against me and I had to wait for a hearing.

Q. Those were his exact words? A. I'm pretty sure.

Q. You are pretty sure those were his exact words? A. Yes.

Q. Did he explain what he meant by charges? A. No, he didn't.

Q. Did you ask him? A. No. I didn't.

Q. Did Mr. Estrada explain what he meant by a hearing? A. No, he didn't.

Q. Did you ask him? A. No, I didn't.

Q. Did you speak before Mr. Estrada spoke to you? A. No, I didn't.

41 Q. You didn't say anything? A. No.

Q. Mr. Estrada say anything else in this meeting? A. No, he didn't.

Q. How about Mr. Becker, did Mr. Becker talk at all? A. No, he didn't.

Q. He didn't say anything? A. No.

Q. How about Mr. Kupersmit? A. No, he didn't either.

Q. Excuse me? A. He didn't either.

Q. A few moments ago I thought you said when you went into the room they were talking about your job.

You just told me now that Mr. Kupersmit and Mr. Becker never said a word? A. I wasn't in the room yet.

Q. You were on your way into the room when you heard them talking? A. They stopped me right there and then told me to come in.

* * * * *

43 JUDGE BARBAN: Before you continue your cross examination, Mr. Brand, there was a reference to a Mr. John Becker.

Can you identify him for me, please?

MR. BRAND: Yes sir, he is Containair's vice president in charge of marketing and sales.

* * * * *

RICHARD BARTH

having been previously sworn, resumed the stand and testified further as follows:

CROSS EXAMINATION (Continued)

Q. (By Mr. Brand) Mr. Barth, can you tell me what procedure you followed with respect to the preparation of goods for shipment in your capacity as a shipping clerk? A. Well, I went to George Estrada's office and got the invoices.

44 Then I made out the bills of lading to the different companies.

Then I called up the companies to come and pick up their goods. When they came in I loaded then..

Q. What was entailed in making out the bills of lading?
A. You had to put down the address of the place that it was going to, the date, who was taking the goods, what company is taking the goods.

Q. The company that purchased the goods, that were going to receive the goods, you mean, or you mean the carrier?
A. The carrier.

Q. You had to get the name of the carrier that had to be included? A. Right, I had to put down what was going out.

Q. Type of goods? A. Right.

Q. Do you keep all the copies of the invoices? A. I keep the fourth copy.

Not the invoice. I keep the bill of lading, the fourth copy of the bill of lading.

Q. What happens to the other copies? A. One and three, after it comes back, after the driver signs it, I bring it into the office, so I hold on to it until somebody picks it up.

45 Q. Then when somebody picks it up? A. The invoice and the number two copy the driver keeps.

Q. What happens to any other copies? A. That's all the copies.

Q. Well, maybe I'm off. You said the invoice and the number two copy the driver keeps.

The fourth copy -- A. I keep.

Q. You keep.

Is the invoice you are talking about the first copy, the original? A. That is original.

Q. What happens to the third copy? A. One and three go into the office.

Q. It is your responsibility then to call the companies to come and pick up the goods at the time when you are making out the invoice? A. Right.

Q. Mr. Barth, on March 15th, isn't it a fact that in your conversation with Mr. Estrada that he said to you that he was in the process of investigating charges that were against you, incidents that were related to you and that he would let you know pending the outcome of that investigation? A. He said when the hearing comes
46 up I will know.

Q. When a hearing comes up? A. Right.

Q. What did you understand by the word hearing? A. I figured we were going to go to Court and they were going to settle something if there were any charges.

Q. Did you know whether there charges against other people? A. I didn't know if there were charges against other people.

Q. Mr. Barth, during the course of your picketing activity, did you at anytime stop any trucks that were trying to make deliveries? A. No.

Q. You never stopped any trucks? A. No.

Q. Did you ever talk to any truck drivers? A. Yes.

Q. How did you get to talk to the truck drivers? A. They came in, they saw us picketing so they wanted to know why.

We were on strike for Local 295 and if they wanted to cross they crossed.

If they didn't, they didn't have to.

47 Q. How often did you stop trucks? A. I didn't stop.

MR. KRAMER: Objection.

Q. How often did you talk to truck drivers? A. Not too often.

Q. Excuse me? A. Every once in a while when they came in if they wanted to talk.

Q. Did you ever approach the truck themselves? A. No.

Q. You never approached the trucks? A. No.

Q. You never got on the truck and talked to a driver while he was sitting in a truck? A. Yes, the truck driver called me over and I talked to him.

Q. He called you over? A. Yes.

Q. What driver, what truck drivers did you speak to, do you know the companies? A. Unida, that is the only one I can remember.

Q. When did that occur? A. I guess in the beginning of March.

Q. Did you recognize the truck driver, had you seen him before? A. Maybe once or twice, I don't know.

48 Q. Do you know his name? A. No.

Q. How many truck drivers did you talk to total during the time you were doing picketing?

* * * * *

49 A. Maybe two or three, that is about it.

Q. Is my recollection correct that you testified you were on the picket line from the beginning of the strike until March 13th every single day except for Saturdays and Sundays about 8:00 in the morning until 5:30 at night? A. Yes, I was there.

50 Q. And during that whole period of time you only spoke to two or three truck drivers? A. Right.

Q. In fact, isn't it a fact that you really spoke to many more than that? A. No.

MR. KRAMER: Objection, argumentative.

JUDGE BARBAN: Overruled. You may answer.

A. (Continuing) No.

Q. It is not a fact? A. I never talked to any other drivers but two or three.

Q. What other companies were the drivers from besides Unida? A. I don't know.

Q. What did you say to the Unida truck driver? A. Nothing. They just talked to me.

Q. You said nothing? A. I talked to them whatever he asked me.

Q. What did he say to you?

What was the nature of the conversation? A. He asked why we are on strike and he said he didn't want to cross the picket line.

He said he wasn't going to cross and I repeated why, if he didn't have to.

51 Q. He just asked you why you were on strike? A. Yes.

Q. What else did you say he said? A. That is about it.

Q. Besides asking you why you were on strike? A. Besides that?

Q. Besides that what else did the driver say? A. He was just saying that he is not going to cross the picket line.

Q. What about the other drivers that you talked to, what was the nature of those conversations? A. The same thing.

Q. Exactly the same thing? A. Well, just about. He asked the same questions. If they wanted to cross, they can cross. I didn't say anything they couldn't. They cross if they wanted to.

Q. The drivers did all the talking? A. Well, I just answered the questions that they threw at me.

Q. What did you say? A. I don't know. I don't remember the questions now.

Q. You said there were two or three drivers that you spoke to, right?

Did all of these drivers respect the picket line? A. Some of them, some of them didn't.

52 Q. How many? A. I wouldn't know, I wouldn't know.

Q. There were only three people, a maximum of three people? A. Those people that I talked to?

Q. Yes. A. I think two of them did. Two of them left.

Q. What did the other driver do? A. I guess he backed in there and loaded.

Q. Do you remember any of the types of goods that were being loaded?

Do you have any recollection as to that? A. I don't know. The containers, I guess.

Q. They were picking up? A. Either taking stuff off or picking up.

Corrogated and if it was Unida it was probably corrogated they were taking off.

Q. They were delivering the corrogated? A. Right, to Containair.

Q. What about the other two, were they making deliveries or were they making pickups? A. The rest of them were making deliveries.

Q. You said you guess. Were they or weren't they? A. I don't know. It is on the truck. I can't see. I can't see through the truck.

53 Q. You don't know? A. No, I don't know.

Q. You don't know whether they were making deliveries or they weren't making deliveries? A. They might have been picking up something.

Q. I show you your affidavit again, Paragraph 3.

Paragraph 3, Mr. Barth, states, "During the picketing I told drivers of trucks making deliveries that they could cross the picket line if they wanted, but I asked them to respect the picket line. Most did."

Now, you told me that you spoke only to three truck drivers, one of them was making deliveries, the other two you didn't know what they were doing, and your affidavit here indicates you were pretty certain that all the drivers you were talking to were making deliveries. A. So they could have made deliveries. I don't know. I said I didn't know.

Q. If you didn't know why did you so swear in your affidavit in May?

MR. DAVIS: Objection, your Honor.

JUDGE BARBAN: Overruled.

A. Well, I believe, I assumed if it is Unida they could be either picking up or delivery.

Q. That was Unida and we are talking about the other two.

54 You said there was only one Unida truck driver and the other two were other truck companies. A. I don't know. They could up or deliver.

Q. Why did you swear they were all making deliveries?

A. They might have been, those drivers, I don't know.

Q. You didn't say they might have been in your affidavit, you said that they were.

Are you wrong in what you swore to in your affidavit then?

A. If they made deliveries, they made deliveries.

I might have said deliveries meaning pick up or deliveries, I don't know.

Q. You didn't say pick up of deliveries, you were very explicit, you said making deliveries; isn't that what you said?
A. Right, it says that.

Q. Were you wrong in what you had to say? A. I don't know. Pick up, deliveries, the same thing. Coming into the place. The trucks got to come there.

Q. Mr. Barth, during the course of the picketing and during the hours of 8 to 5:30, did you go out to Emery Air Freight?
A. Yes, I did.

55 Q. You did go out to Emery Air Freight? A. Yes, I did.

Q. What were you doing out at Emery Air Freight? A. I seen one of our -- one of Containair's trucks there and watched them, see what they were doing.

Q. You watched the truck to see what they were doing, so you saw the truck leave the plant?

You saw the truck leave Containair's plant? A. Yes. I know it left.

Q. Excuse me. A. I seen it leave.

Q. Then you went also out to Emery? A. I just went out there.

Q. You went -- A. I didn't know they were going there, I just happened to go there.

Q. You just happened to go there? A. Right, I was going there and the truck came in.

Q. Why were you going out to Emery? A. I wanted to.

Q. To do what? A. I don't know, I just wanted to see. I didn't know the truck was going there, but it happened to go there.

Q. Why were you going to Emery? What was your purpose
56 for going to Emery? A. I wanted to see what they do.

Q. To see what Emery does? A. Yes.

Q. Coincidentally the same time one of our trucks happen to go out to Emery? A. Right.

Q. What did you find out when you went to Emery? A. I didn't see them do anything.

Q. You didn't see who do anything? A. Emery people there. They didn't pick up, they didn't take it.

Q. Well, what was it that you wanted to see out at Emery in the first place?

That is what I'm a little bit confused about. A. I wanted to see if they would take Containair's at Emery.

Q. You wanted to see if they would take Containair's at Emery, so did you follow our truck out there? A. I didn't follow it out there.

Q. You didn't know where the truck was going, that is what you said? A. I just assumed it was going there.

Q. You assumed it was going there? A. That is where they go mostly.

57 Q. How many places do our trucks deliver at? A. They deliver to New Jersey. I don't know, different places, I don't know.

Q. Different places? A. Yes, all over.

Q. They deliver all over? A. Right.

Q. And you just assumed that was where they had to be going? A. Right.

Q. So did you go the same way that our truck went? A. No.

Q. You went a different way? A. Right.

Q. How soon after the truck left did you leave? A. Couple of minutes.

Q. Very shortly afterward? A. Right, and I see them go a different way and I went a different way.

Q. What did you do out at Emery when you got there? A. Watch them.

Q. From where? A. From across the way.

Q. Did you speak to anybody at Emery? A. No.

58 Q. Never spoke to anybody at Emery? A. No.

Q. How long did this trip take you to go to Emery?

A. To get there from Containair?

Q. Yes. A. Five, ten minutes.

Q. Five or ten minutes? A. Yes.

Q. How long did you spend at Emery? A. Fifteen, twenty minutes maybe.

Q. What did you do when you got there? A. After I left there, I went back to Containair.

Q. How many times did you go out to Emery? A. Twice.

Q. Two times? A. Right.

Q. What were the dates that you went out, do you recall?

A. No, I don't.

Q. Do you recall the months? A. Between, I guess, between February 22nd and March 13th.

Q. Did you do it anytime during February? A. I wouldn't really know. I don't think so. I think it was March.

59 Q. You think it was March? A. I think, I'm not too sure. Could have been the end of February.

Q. Who were in the trucks when you went out there?

Who drove the trucks from the company premises? A. Bobby Gregorio drove and John Estrada was sitting right by him.

Q. Both times?

You told me you went out twice? A. I only seen one time, I remember I seen Bobby Gregorio and George Estrada.

I don't remember the other times.

Q. What route did you take out there?

How did you go? A. 147th Avenue.

Q. And you just stayed on 147th? A. It goes right into the airport and you go across Rockaway Turnpike until you go right to the airport there.

Q. What way did the truck go? A. I guess it went the other way.

Q. What other way? A. I think you go -- I think it is North Conduit to 150th Street.

Q. What was that? A. North Conduit to 150th Street. Make a left on 150th.

Q. Were the trucks unloaded that went out to Emery when
60 your car was there? A. No.

Q. The trucks were not unloaded? A. Right.

Q. Mr. Barth, getting back to the procedure for bills of lading, you said you write the address, the date, the name of the carrier and the type of goods.

What date is filled in? A. The date it is going out.

Q. The date the goods are ready for shipment? A. Right, the date they go out.

MR. BRAND: I have no further questions.

JUDGE BARGAN: Mr. Davis, any redirect?

MR. DAVIS: I have no redirect.

JUDGE BARBAN: Mr. Kramer?

REDIRECT EXAMINATION

Q. (By Mr. Kramer) Mr. Barth, you said you assumed that trucks would be going to Emery.

Why would you make such an assumption? A. Well, I seen them pull out. I just thought maybe it is Emery. That is all I thought so I just went there.

If they went somewhere else, they would have went somewhere else, I don't know.

Q. When you did paper work like bills of lading did you very often have to put the name Emery Air Freight on them?

61 A. Yes.

Q. Is Emery one of the largest customers? A. Yes.

Q. Of Containair? A. Yes.

MR. KRAMER: Thank you.

JUDGE BARBAN: Are you finished?

MR. KRAMER: I'm finished.

JUDGE BARBAN: Recross on this one point now?

MR. BRAND: Yes, this one point.

RECROSS EXAMINATION

Q. (By Mr. Brand) Did you ever see if any of Containair's trucks went to any other client? A. Excuse me?

Q. Did you ever go to any of Containair's other clients when trucks left Containair's premises? A. No.

Q. Why were you interested in Emery? A. Because it is a big company.

Q. Who else does Containair deal with? A. Dupont, Digital, I don't know them all.

Q. Deal with Singer? A. Yes.

Q. Are they pretty big companies, even bigger than Emery?

62 A. Not for us, I don't think.

Q. Excuse me. A. Not for the company, I don't think.

Q. Did anybody tell you to go over to Emery? A. I knew it couldn't be Singer though.

Q. Did anybody tell you to go over to Emery? A. No.

Q. You decided on your own? A. Right.

MR. BRAND: I have no further questions.

MR. DAVIS: I have no questions.

MR. KRAMER: No questions.

JUDGE BARBAN: What did you say?

MR. DAVIS: I have nothing.

JUDGE BARBAN: Mr. Barth, just one question.

After you began as shipping clerk and while you were doing that work did any of the supervisors or management of the company ever discuss with you the way you were making out bills of lading?

THE WITNESS: Nobody ever said I was making them wrong.

JUDGE BARBAN: Did any discuss with you how you were making them out, either good or bad?

THE WITNESS: No, they didn't.

63 JUDGE BARBAN: Anybody speak to you with respect to dates you were putting on bills of lading?

THE WITNESS: No.

* * * * *

79 16 Court Street
Brooklyn, New York
September 13, 1974

* * * * *

82 NORMAN DAVIS

* * * * *

DIRECT EXAMINATION

* * * * *

83 Q. (By Mr. Davis) Mr. Davis, whom are you employed by? A. Containair Systems Corporation.

Q. And how long have you been working there? A. About one year and nine months.

Q. Are you still working there? A. Yes.

Q. Are you appearing pursuant to subpoena today? A. Yes.

Q. Could you tell us when the -- strike that.

What type of work do you do at Containair Systems Corporation? A. Assembling.

Q. Now, Mr. Davis, I'm sure you can hit the door with your voice if you tried, so try to speak a little louder. A. Yes, sir.

Q. When was the first time you heard about Local 295?

84 A. About a week before the 22nd, I think -- before the 22nd.

Q. The 22nd of what? A. Of February.

Q. Well, what happened on the 22nd of February? A. We went on strike.

Q. What happened when you went on strike?

What did you do? A. We went --

MR. BRAND: Objection.

You're asking specifically what Mr. Davis did.

This is beyond the scope of this proceeding.

We're only concerned with Mr. Barth.

JUDGE BARBAN: Overruled.

You may answer the question.

Q. (By Mr. Davis) What did you do when you went out on strike? A. We started picketing that morning.

Q. And how long did the picketing continue, if you remember? A. From February 22nd until March 14th.

Q. What happened on March 14th? A. We went -- we went for a job on March 14th.

Q. And could you explain what you mean by you going for a

85 job? A. Yes.

We went to the office, to the main office.

It was a group of us who went.

Al Williams asked for a job.

Q. Now, which officer are you talking about? A. The main office.

* * * * *

86 Q. (By Mr. Davis) What did Mr. Williams say at this time? A. I don't remember what he said directly, but I knew he asked for our jobs back.

JUDGE BARBAN: Just a moment, please.

The Reporter heard you differently than I did.

87 I have a note as to what I thought you said the first time.

He asked for whose jobs back?

THE WITNESS: Ours, not -- it was a group of us.

He went and asked for our job back.

Q. (By Mr. Davis) Mr. Davis, who was in the group of people at that time? A. It was Richard Barth, Eddie Lunsford, Claude Phipps, Lonnie Gentry.

I don't remember the others.

Q. Now, whom did Mr. Williams say that to? A. Mr. George Estrada.

Q. Now, did Mr. Estrada say anything back? A. He said you must wait a little, he's going to check with his lawyer.

Q. And did Mr. Williams or anyone else reply to what Mr. Estrada said? A. Reply?

Q. Did Mr. Williams or anyone in the group say anything back to Mr. Estrada? A. No.

We waited.

Q. What time did Mr. Williams speak to Mr. Estrada that

88 day? A. I think it was about 8:00 a. m.

Q. 8:00 a. m.? A. Yes.

Q. And what did you do then? A. Oh, we waited when he told us that he has to go and check.

Q. Where did you wait? A. In the car on the opposite side of the street.

Q. How long did you wait? A. We waited about two hours.

Q. And what did you do then? A. Then I think we went back.

Q. Back where? A. To the office, the main office.

Q. And do you recall who went back to the main office at that time? A. I think we all went back.

Q. Was there any conversation then when you went back? A. Yes.

We speak to George Estrada.

He say he didn't get in touch with the lawyers yet.

Q. Now, who did the speaking to Mr. Estrada? A. I think it was Al Williams.

89 Q. And after Mr. Estrada said what you said he said, did Al Williams say anything back to Mr. Estrada? A. I don't know.

Q. What did you do after Mr. Estrada said he had not checked with his attorney? A. Oh, he told us that, well, we must give him a little time so that he could check and we could call him back later.

Q. What did you do then? A. I went home and I called him at 4:00 o'clock that evening.

Q. And whom did you speak to when you called? A. I think I speak to -- I called and the secretary answered.

Then I spoke to George Estrada.

Q. And what did you say to him and what did he say to you? A. Oh, I told him that I was calling to, as he said, and he told me to come to the plant.

Q. I'm sorry, could you repeat what you said? A. I called him.

I told him that I called about 4:00 so that -- so that I would know what I was supposed to do.

* * * * *

91 JUDGE BARBAN: * * * Apparently, this witness made an application to come back.

According to his own testimony, he is presently working.

MR. BRAND: Yes.

* * * * *

92 MR. DAVIS: Your Honor, may I make a brief statement in view of other statements that have been made by counsel in this regard?

JUDGE BARBAN: Well, I didn't intend to open up a large argument.

If you want to make a brief statement, go ahead.

MR. DAVIS: Yes.

We are not here saying there was any violative in the manner in which Mr. Davis was handled at the time that he applied for reinstatement, or we're not saying that he was not lawfully reemployed.

We have produced Mr. Davis for the purpose of supporting the manner in which, as Mr. Barth testified, the nature of the request for reemployment was made by Mr. Barth and for other reasons.

JUDGE BARBAN: Mr. Davis, I understand.

Would you please go ahead.

MR. DAVIS: Thank you, sir.

Could you read back the last question.

(Record read.)

Q. (By Mr. Davis) What did Mr. Estrada say at that time?

A. When I called?

Q. Yes. A. He told me to come to the plant.

93 Q. He told you to come to the plant? A. Yes.

Q. Did he say when you should come? A. He asked me what could I get there.

I said in about ten minutes' time.

Q. And what happened then? A. I arrived at the plant about 15 minutes later.

Q. Did you have any conversations with anyone there? A. Yes.

When I arrived I think I went to George Estrada's office.

Q. And what did you say to him there and what did he say to you there? A. I went inside of the office.

I met Mr. Kupersmith there and George Estrada was inside there, too.

Q. And what did they say to you, if anything, and what did you say to them? A. Mr. Kupersmith was talking.

It was about -- I don't really remember what -- it was nothing about being off and things like that.

Q. Well, do you remember what he did speak to you about, either -- A. Yes.

94 He speak about coming back to work and things like that.

Q. Did Mr. Estrada speak to you, also? A. Yes, in replying to the argument that Mr. Kupersmith made.

Q. Well, what did he say; if you remember? A. I don't remember.

Q. When did you start work? A. He told me I could start work in the next day, the 15th.

Q. And what did you say? A. I said, "Okay, I'll be at work."

Q. And when did you actually begin work? A. I start working on the 15th.

Q. Of what month? A. Of March.

Q. Now, Mr. Davis, did you hear from any source as to why Mr. Barth would not return to work? A. I saw him at the supermarket once when I was on break time.

Q. When was that, if you remember? A. I don't remember what day it was.

Q. Well, do you remember approximately after your conversation on March 14th, about how much later would it have been? A. About a week or two.

95 Q. About a week or two? A. Yes.

Q. Whom did you see at that time? A. Mr. Barth.

Q. And did you have a conversation with Mr. Barth at that time? A. Yes.

Q. What did he say to you and what did you say to him?

A. I asked him why didn't he report back to work.

He said he couldn't because there are charges against him.

MR. BRAND: I'll object.

That's not probative of the matter, the conversation that he had with the party involved.

JUDGE BARBAN: Mr. Davis, do you have any purpose in this?

MR. DAVIS: Yes, sir.

It's corroborative of the reason for Mr. Barth's -- for the company's failure to reemploy Mr. Barth.

Now, the company, in its answer, denies that Mr. Barth has made --

JUDGE BARBAN: Let's not get into this.

You're saying that Barth told this witness what management told him?

MR. DAVIS: That's right.

96 JUDGE BARBAN: And you claim that this testimony supports the truth of Barth's testimony?

MR. DAVIS: That's correct.

But, also, it goes to my burden of proof.

MR. BRAND: That's really a self-serving statement, whatever Mr. Barth may have said.

JUDGE BARBAN: I'm going to overrule the objection.

I'll determine the weight to be given to it at a later time.

Go ahead.

MR. BRAND: I'd like my exception noted.

JUDGE BARBAN: Oh, you have an automatic exception.

MR. BRAND: Okay.

Q. (By Mr. Davis) Did you say anything -- strike that.

Did Mr. Barth say anything further to you at that time?

A. No.

Q. Did you say anything to him back? A. Only told him I got to go.

* * * * *

97 CROSS EXAMINATION

Q. (By Mr. Brand) Mr. Davis, when you came -- strike that, please.

Mr. Davis, who is -- can you tell me who is a person by the name of Lee?

MR. DAVIS: Objected to, your Honor.

It's outside the scope of direct.

It's totally irrelevant.

JUDGE BARBAN: Well, as a preliminary question, I'll take it.

Do you know a person by the name of Lee?

THE WITNESS: It's Gentry, I think.

98 Q. (By Mr. Brand) It's a nickname for Lonnie Gentry?

A. Yes.

Q. On March 14th, when you went to see Mr. Estrada in the morning for the first time at 8:00 o'clock, I believe you said -- is that correct? A. We went --

Q. As a group to see Mr. Estrada? A. Yes.

Q. You said it was 8:00 o'clock which was the first time you went in to see him? A. Well, I guess it was in the morning about 8:00 o'clock.

Q. Okay.

How many of you were in the group? A. Oh, I would say about six, about.

Q. About six? A. Yes.

* * * * *

102 BESS MANDELL

was called as a witness for the respondent, and having been first
103 duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Brand) What is your full name? A. Bess Mandell.

Q. By whom are you employed? A. Containair Systems Corporation.

Q. In what capacity? A. Bookkeeper, full charge.

Q. And how long have you been so employed at Containair Systems? A. Fifteen years.

Q. Can you tell us what your job duties and responsibilities are as bookkeeper for Containair? A. Well, in my position as full bookkeeper, it's actually full charge, taking care of all customers, both sales, incoming monies, purchases, payments, payroll, if necessary, billing, making up bills of lading when needed, anything and everything that could possibly be taken care of in an office.

Q. I see.

Do you exercise any control over any of the office personnel? A. Yes.

104 There are two young ladies there who are beholding to me for whatever might come up.

I am in full charge of the office.

MR. BRAND: May I have this marked, please.

JUDGE BARBAN: That's Respondent's Exhibit 8 for identification.

(Document so marked for identification as Respondent's Exhibit 8.)

Q. (By Mr. Davis) Mrs. Mandell, I show you a document which has been marked for identification as Respondent's Exhibit 8, and ask you if you can tell us what this is (handing)? A. Yes.

This is a copy of our invoice.

It's a five-part invoice. This copy doesn't have any number, but they're all consecutively numbered.

Q. Mrs. Mandell, can you tell us what the procedure is for invoicing of customer orders? A. Yes.

A customer either writes in or calls in an order.

We take one of these invoices, address it to the customer, enter our purchase order number, customer's purchase order number, date the order has come in, the item ordered, and from there on in we distribute the copies.

105 The orange copy, which is the last copy, is used both as a production schedule copy and then ultimately as a packing list.

The green copy is kept on the tray on the desk of the billing and order clerk.

The other three copies are placed in a file until such time as the order has been shipped and ready for billing.

Q. And what happens to -- what is the procedure for distribution of these slips? A. Okay.

George Estrada is initially given the orange copy to set production in motion.

When material is ready for shipment, the shipping clerk gets the orange copy, is instructed to call his carrier, make up his bill of lading, get the shipment on its way.

Q. What happens after the -- A. Once the shipment -- once the carrier has come in, the bill of lading, number one and three, signed by the carrier, are to be brought into the office.

Number four is kept in the shipping office with the shipping clerk's papers.

Number two, with a packing list, is given to the carrier to send it on its way.

106 When the office gets the signed bill of lading, we pull the green copy off the tray of the desk of the shipping clerk -- of the billing clerk, we pull the other three copies out of the file, the invoice is billed, the customer gets two copies, the white and the pink with a number three copy of the bill of lading attached showing that shipment was completed.

The green copy goes into the customer's permanent file in the office with the original bill of lading.

The yellow copy is the copy from which I make my entries into the ledgers.

Unless we get a signed bill of lading in the office, no shipment is made; we have no proof any shipment has gone out.

Q. On or about -- can you state whether or not on or about February 26th, 1974, you encountered a problem with the green copies of the invoices? A. Yes, I did.

Q. Can you tell us what happened on that date? A. Around February 26th, I noticed on the billing clerk's desk in her tray, an excessive amount of green copies.

I questioned her about these copies, saying that production seems to be up to schedule, what are we doing with so many green copies in your tray?

107 She says, "I don't know." She says, "I'll have to check with George and see why we have so many green copies."

At that point Mr. Estrada went into the shipping room and he came back with about three or five bills of lading that had been on Richard Barth's desk.

Since he was the shipping clerk, they had not been signed -- the carriers had signed, but the bills of lading had not been signed and no materials had been brought out.

We brought them in and we took care of that from there on in.

That same week we started to get phone calls from customers, an excessive amount of phone calls, "Where is our material?"

At that point we started to make an investigation to see what happened.

Q. Mrs. Mandell, I'm going to show you a few documents which I'd like to have marked first for identification.

MR. BRAND: Would you please mark these with three different numbers, and you can make an A or a B for whatever -- since there are two documents for each of the individual, there should be some distinction between each of the two.

108

(All documents so marked as Respondent's Exhibits 9A and B, 10A and B and 11A and B for identification.)

Q. (By Mr. Brand) Mrs. Mandell, I'm going to show you two documents, one marked Respondent's Exhibit 9A, which is the top copy, and the second marked Respondent's Exhibit 9B, which is the second copy, and ask you if you can identify each of those documents (handing)? A. Yes.

This is a photostat of the original bill sent to the customer with a copy of a bill of lading attached.

MR. DAVIS: Is that 9A?

Excuse me.

MR. BRAND: Yes, 9A and B, she's referring to.

MR. DAVIS: Thank you.

THE WITNESS: It will show the date the customer's order was received.

Also, it will show the date on the bill of lading as to when the material was ready to leave.

Also, it will show the date of the billing, which is the date that the material left the plant.

JUDGE BARBAN: Can you identify each of those two documents by a specific date that appears on the document?

THE WITNESS: Yes.

109 JUDGE BARBAN: Please.

THE WITNESS: The original billing -- the original document, which is the -- I mean, the invoice, was dated February 28th.

MR. DAVIS: Is that 9A?

Excuse me.

MR. BRAND: Yes.

MR. DAVIS: Thank you.

JUDGE BARBAN: February 28th?

THE WITNESS: Yes.

JUDGE BARBAN: What year?

THE WITNESS: 1974.

JUDGE BARBAN: Go ahead.

THE WITNESS: The bill of lading, which indicates the date the material was ready for shipment, is dated February the 8th.

MR. DAVIS: 9B?

MR. BRAND: Yes.

THE WITNESS: Yes.

Inasmuch as we bill the date the material is picked up, not by the date on the billing.

The material was laying in our plant on the 8th to the 26th without going out.

Q. (By Mr. Brand) Mrs. Mandell, can you state whether
110 or not Respondent's Exhibit 9B is one of the documents which Mr. Estrada found on or about February 26th?

MR. DAVIS: Objected to, your Honor?

How can she testify as to what Mr. Estrada found?

JUDGE BARBAN: That is sustained unless you can lay some foundation for personal knowledge of the witness.

Q. (By Mr. Brand) Mrs. Mandell, do you have any personal knowledge as to the answer to the question that I'm asking you? A. Yes, I do.

Q. And what is that personal knowledge? A. That on the 26th when George Estrada went into Richard Barth's office, he brought back bills of lading.

We processed it after that date.

The shipment had not gone out.

JUDGE BARBAN: That wasn't the question.

THE WITNESS: Oh.

JUDGE BARBAN: The question was whether Mr. Estrada found a product in the shipping room on that date.

Do you have personal knowledge as to whether he -- were you there?

Did you see him find a product?

THE WITNESS: I was not in the shipping room, no.

JUDGE BARBAN: All right.

111 Q. (By Mr. Brand) Can you state whether or not Mr. Estrada brought in the document, which is Exhibit 9B, to the office -- A. That he did.

Q. -- on or about the 26th? A. That he did.

Q. All right.

Mrs. Mandell, I'd like to now show you Respondent's Exhibits 10A and 10B for identification, and ask you if you can identify those documents (handing)? A. Yes.

Q. What are they? A. This is a similar instance.

Q. To Exhibit 9A and B? A. Yes.

This is a similar instance where the shipment was ready to leave the plant on the 19th of February, according to the date that the bill of lading was made up, where it did not leave the plant until the 27th.

JUDGE BARBAN: Please, you're giving me some difficulty. You are not answering the questions.

THE WITNESS: Oh.

JUDGE BARBAN: The question is:

Can you identify the documents?

112 THE WITNESS: Yes.

JUDGE BARBAN: The witness' description in her last statement is stricken.

THE WITNESS: Oh.

JUDGE BARBAN: It's not responsive.

THE WITNESS: I'm sorry.

JUDGE BARBAN: That's all right.

Now, would you just tell us what the documents are, please?

THE WITNESS: Yes.

The document is an invoice to a customer and a bill of lading showing the date when the product was shipped.

JUDGE BARBAN: What are the dates?

THE WITNESS: February 27th for the invoice and February 19th for the bill of lading.

Q. (By Mr. Brand) Mrs. Mandell, can you state whether or not Mr. Estrada brought that into the office on or about February 26th? A. Yes, he did.

Q. And were you invovled in the processing of Respondent's Exhibit 10A and 10B for identification? A. Yes.

Q. Mrs. Mandell, now I'd like to show you Respondent's

113 Exhibits 11A and 11B for identification, and ask you if you can identify them (handing)? A. Yes.

Q. Would you please do so? A. It's another invoice to one of our customers where the bill of lading is dated February 19th, showing that the material was ready for shipment on that date.

It, however, did not leave the plant until February 27th, the date of the invoice.

Q. Mrs. Mandell, can you state whether or not Mr. Estrada brought in Respondent's Exhibit 11B to the office? A. Yes, he did.

Q. And Mrs. Mandell, can you state whether or not you processed Respondent's Exhibit -- A. Yes, I did.

Q. -- numbered 11A and 11B? A. Yes, I did.

MR. BRAND: I would like to offer into evidence Respondent's Exhibits 8, 9A and B, 10A and B, and 11A and B into evidence.

MR. DAVIS: May I question her on voir dire briefly, your Honor?

JUDGE BARBAN: Go ahead.

VOIR DIRE EXAMINATION

114 Q. (By Mr. Davis) Mrs. Mandell -- A. Yes.

Q. -- I show you Respondent's Exhibit 11A for identification, and ask if you typed that out yourself (handing)? A. It's difficult -- I believe I did type this.

Either I could have typed it or Mary could have typed it.

We both process at the same time.

Our typewriters are the same.

Q. What is Mary's last name? A. Saidens.

Q. Is she still employed? A. Yes.

Q. And could you tell us by looking at Respondent's Exhibit 9A who typed that out, if you know? A. I could very well have typed it or she, either one of us.

Q. The same thing for 10A? A. Right.

It could either be one or the other.

As I said, I do help out when necessary in that field.

Q. Okay.

Mrs. Mandell, do you still do work for -- does the company still supply material to General Electric, Daniel Hodes and Wilson
115 Airfreight? A. Yes.

Q. To this day -- A. Yes.

Q. --- you still do? A. Yes.

Q. Do you know who filled out Respondent's Exhibit 10B?
A. Richard Barth.

His initials are on there.

* * * * *

120 Q. (By Mr. Brand) Mrs. Mandell, I'm going to show you again Respondent's Exhibit 9B.

Next to -- on the very bottom of the page, the next to the last line, there is some black lettering, "shipper per" -- A. R.B.

Q. Is that Richard Barth? A. Yes.

121 JUDGE BARBAN: You are acquainted with his initialling other bills of lading while he was there?

THE WITNESS: Yes.

JUDGE BARBAN: All right.

Q. (By Mr. Brand) Mrs. Mandell, on Respondent's Exhibit 11B there is also the initials RB next to "shipper per."

Can you identify those (handing)? A. Right.

Those are Richard Barth's.

Q. Thank you.

* * * * *

Q. (By Mr. Brand) Mrs. Mandell, I believe you testified that during the week of February 25th, 1974, you had received a number of complaints.

Can you tell us about how many complaints the company received at that time? A. I'd say there were at least ten or fifteen or more calls from customers about not having received the material.

Q. In or about the first week of March 1974, did you -- can you state whether or not you encountered any other problems
122 with invoices or bills of lading? A. Yes.

Since customers' calls were still coming in for lack of receiving their material on time, George Estrada went into the shipping room and made an intensive search for bills of lading.

At that time, he came into the office with a handful of bills of lading that he had found in various parts of Richard Barth's desk -- some were on the desk, he said, some were in the drawers.

I had no way of knowing, I wasn't there. But I saw them -- I was in the office when he brought in a fistful of bills of lading.

Some of them bore signatures of carriers, some had no signatures of carriers.

Material was ready to be shipped but we had no way of knowing at that point what was shipped and what wasn't shipped until an investigation was made.

Q. What was done with the documents that Mr. Estrada brought in?

Did he give any orders as to what was supposed to be done with respect to those? A. Yes.

He said to do some research on it to see how we could tie it in
123 with any shipments that may have gone out or with shipments that had not gone out.

We had no way of knowing until everything was looked into.

Q. And were you, personally, involved in that process? A. No, that I was not.

Q. Did you oversee what was done? A. I oversaw what was done, right.

But we did receive a call from one customer who had received material, a damaged container.

We had checked our records and we said that it's impossible, we have no record of shipping this container to you.

They said, but we did receive it.

We started to look through our files.

We found the green copy; we found the other copies in the file.

We had not billed the customer.

We started to look through for the number 4 copies of the bills of lading to see whether or not a bill of lading had been made up.

There was no bill of lading.

The customer insisted they had the material, so we invoiced it but marked on the invoice, "No Bill of Lading, No Record of Shipment," something to that extent.

I don't remember the exact words that we put on it.

124 MR. BRAND: I'd like to have this document marked as Respondent's Exhibit No. 12 for identification.

(Document so marked for identification as Respondent's Exhibit No. 12.)

JUDGE BARBAN: Did you testify the date or the approximate date when Mr. Estrada came in with this fistfull of bills of lading?

THE WITNESS: I don't recall. I think it was the first week of March.

Q. (By Mr. Brand) Mrs. Mandell, I show you a document which has been marked for identification as Respondent's Exhibit No. 12.

Can you identify this document (handing)? A. Yes.

Q. What is that document? A. This is a copy of an invoice to one of our customers, dated March 5th, billing them for material on which we wrote, "Merchandise Received. No bill of lading given or found."

Q. Does this document refer to the incident that you have just testified to? A. Yes, it does.

MR. BRAND: I'd like to offer this into evidence, if I may, your Honor?

125 MR. DAVIS: May I question her on voir dire, your Honor?

JUDGE BARBAN: Yes.

VOIR DIRE EXAMINATION

Q. (By Mr. Davis) Mrs. Mandell, when did you type this document out? A. On March 5th.

Q. Did you do that personally? A. I may have done it or Mary.

I don't recall at this point.

Q. And is this a Xerox copy? A. Yes, it is.

Q. Where is the original now? A. The original is with the customer.

Q. The original is with the customer? A. All originals are with customers.

Q. Do you do --

JUDGE BARBAN: Excuse me.

The document, however, from which this was Xeroxed is in your possession?

THE WITNESS: Is in the office, exactly.

Q. (By Mr. Davis) Can you tell us the name of this customer, please?

It's a little blurred. A. Yes.

Steven Gould of Massachusetts.

126 Q. And do you still do work for that customer? A. Yes, we do.

* * * * *

135 CROSS EXAMINATION

Q. (By Mr. Davis) Mrs. Mandell, I believe you testified that unless a signed bill of lading is in the office, no billing takes place.

Is that correct? A. True.

Q. No invoice is typed up; is that correct? A. Final invoicing is not typed up.

Q. But a preliminary invoice is typed up? A. Preliminary invoice without date of shipment.

Q. Without date of shipment? A. Is typed up.

Q. I see.

In other words, without invoice date at all? A. Right.

Q. Because there is no place on -- strike that.

Mrs. Mandell, I show you Respondent's Exhibit 9A.

136 When is that date marked on -- A. February 26?

Q. Yes. A. In on here?

Q. Yes. A. The date that the invoice is prepared for mailing, after the shipment has been made.

Q. After the shipment has been made by your company? A. Right.

Q. Is there any -- is it made the same day that shipment was made? A. If the bill of lading is brought in on time, otherwise it's made the following day.

Q. I see.

Now, when you say a signed bill of lading, what do you mean by that? A. Signed by the carrier.

Q. Signed by the carrier? A. Yes.

Q. I show you Respondent's Exhibit 9B, and I ask you whether this document was signed by the carrier (handing)? A. Yes.

Q. Where does it say that? A. Here is the Eastern Ex-

137 press stamp, with the initials.

Q. Okay.

Now, can you tell from looking at Respondent's Exhibit 9B as to when in fact this shipment was made? A. No, I don't see the date on here.

Q. Now, you testified that there was an excess amount of green copies on the shipping clerk's desk. A. On the billing clerk's desk.

Q. On the billing clerk's desk? A. Right.

Q. When did you first see that, Mrs. Mandell? A. During the week of the 25th.

Q. Of what month? A. Of February.

Q. I see. A. Around the 26th of February.

Q. And what did you do then? A. I spoke to Mary, who does the billing, and told her that I thought that there was an excessive amount of green copies in her tray.

Production was up to schedule, so I couldn't see any reason why billing wasn't out.

Q. How many employees were in the plant at that time?

A. I don't recall offhand.

138 Q. Can you estimate? A. No.

Q. Did you have a full complement of employees at that time?

A. I don't know what the complement was.

Q. Were any of the employees out on strike on that date?

A. Yes.

Q. Approximately how many? A. I don't know.

Q. During the course of your day, did you have occasion to walk through the factory area of the shop at all? A. No.

Q. No? A. No.

Q. You just stay in your office; is that right? A. That's right.

Q. And whom did you ask to check up on the -- why there were so many green copies? A. I told Mary to look into it.

Q. Mary? A. Yes.

Mary spoke to George.

Q. Were you there when she spoke to George? A. In my presence.

Q. What was said. A. The office is small.

139 We all hear what one another says.

Q. What was said at that time? A. She said, "George, we have a lot of green copies here. Would you please see if there are any bills of lading around for material that may have been shipped and not billed?"

Q. Did she tell George to look in Mr. Barth's desk? A. She just told George to look for the bills of lading.

Q. And did she say where to look? A. She didn't have to tell him where to look.

Q. He knew where to look? A. He knew where to look.

Q. He is very familiar with the factory area? A. Yes.

Q. And very familiar with Mr. Barth's desk? A. I believe so.

Q. Mr. Estrada came in with the copies that he allegedly found? A. Right.

Q. How many copies did he have? A. The first time he came in with about three, four.

Q. And when was that? A. Around the 26th.

140 Q. Of February? A. Yes.

Q. I see.

You took care of that?

You sent the orders out? A. That we took care of, right.

Q. Were there any complaints from those customers regarding those orders? A. There were complaints from innumerable customers.

I can't name them by name.

I don't recall the names.

Q. Well, regarding these four, can you recall which customers they were? A. The customers that we billed.

Q. Respondent's Exhibits 9A through 12? A. I believe so.

Q. General Electric? A. Yes.

Q. Daniel Hodes? A. Yes.

Q. Wilson Airfreight? A. Yes, and Stephen Gould.

Q. And Stephen Gould? A. Well, Stephen Gould may have been later; I don't recall.

No, that was on a later date.

141 Q. And did those customers call? A. They may have called.

I don't recall offhand specifics, that is, specific names of customers.

I know that we had gotten any number of calls, more than usual.

Q. About how many do you get ordinarily? A. Not too many.

Q. Approximately how many do you get? A. Not too many.

Q. Approximately how many? A. Three.

Q. Per day? A. No.

Q. Per week? A. Possibly.

Q. And how many did you get on this occasion? A. Maybe ten.

Q. Per day? A. Yes.

Q. For how many days? A. I don't know whether it was every day.

It went on for at least a week, or more.

Q. Ten each day or ten for the whole week? A. I don't recall.

142 Q. Do you recall any of the customers who called that week? A. I don't recall names.

Q. Did you receive the phone calls? A. Not all.

Q. You received some of them? A. Some of them, yes.

Q. And what did they say when they called? A. They asked about their orders, what the status of shipment was.

Q. And what did you say? A. Well, we said we would look into it.

Q. You took down the order number? A. No doubt.

I mean, offhand now I can't tell you exactly word for word what I said at that time.

Q. And what happened after they called?

What did you then do? A. Well, then we started to find -- we looked to George to see what happened to the material, what happened to production.

Q. Now, is this -- A. What happened to shipment.

Q. Now, what week was that that you spoke to George? A. This was the first week of March.

143 Q. The first week of March? A. Right.

Q. Production then was also up to schedule? A. More or less, right.

Q. I see.

You had -- strike that.

Did you know how many employees you had in the week -- A. Offhand, no.

Q. -- in the first week of March? A. No, I don't.

Q. Now, when any of these customers called, did you tell them that you were having a problem with Richard Barth, your shipping clerk? A. No.

Q. No? A. No.

Q. Did you inform them that there was a strike then going on at the respondent's plant? A. I don't recall whether I said anything like that or not.

Q. Do you know whether or not at that time there was -- whether trucks were prevented from coming into the plant?

A. That, I do know.

144 Q. And that occurred, to your knowledge? A. Pardon me?

Q. That occurred? A. That did occur.

Q. About how many times? A. I can't say, but I know that trucks were turned away.

Q. And do you know whether those trucks were involved in picking up things or delivering -- A. Both.

Q. -- or taking things away? A. Both.

Q. So you were not able to ship out, because of this streak, many of the items that you had previously; is that correct?

A. That's true.

Q. Because of the strike? A. Some of the things.

Some things we had to take care of ourselves.

Q. I believe you testified that there were innumerable calls.

A. Yes.

Q. When were those calls placed to your office? A. To our office?

Q. Yes. A. Anywhere between the 26th and the early part

145 of March.

I can't give you specific dates.

Q. And you can't give us specific names, either, can you?

A. No, I can't.

Q. Or numbers of calls? A. There were innumerable calls, right.

I did not take all the calls, but I know a number of calls came into the office.

Q. Who took the other calls? A. Our previous secretary. She's no longer with the firm.

Q. What's her name? A. Ginny Pregolis.

Q. Now, who picks up the -- is it your testimony that the shipping clerk prepares the bill of lading himself?

A. That's right.

Q. And what does he do with it then? A. The bill of lading?

Q. Yes. A. He holds on to the bill of lading until the carrier comes to pick up the material.

Q. And then what does he do? A. Then he has -- then he brings into the office the first and third copies of the bill of

146 lading, the signed bill of lading.

The number 2 copy he attaches to the work order, or packing list.

Q. Where does -- A. He gives that to the carrier.

The number 4 copies he's supposed to keep with his papers in the shipping room.

Q. Now, I show you Respondent's Exhibit 9A and ask if you recall whether or not General Electric called complaining about their not receiving their goods on time (handing)? A. No, I don't remember.

Q. I show you Exhibit 10A.

Did Daniel Hodes call (handing)? A. I can't tell you definitely that they did.

I believe they did.

Q. You believe they did? A. I know that we got calls.

Q. But do you remember specifically -- A. And that's why we looked for these particular ones.

Q. But, do you remember now whether or not you received a phone call -- A. No, I don't know whether --

147 Q. -- from Daniel Hodes? A. -- I received it or not.

Q. So your only knowledge is that some calls were received? A. Yes.

Q. But you can't tell me by whom? A. No, I can't.

Q. I show you Respondent's Exhibit 11A and ask you whether you recall whether or not Wilson Airfreight called? A. My answer is the same.

Q. And what is that? A. That I did not personally -- I don't recall whether I, personally, received a call, but I know customers did call.

Q. You remember specifically that Wilson Airfreight called? A. I don't say specifics. I can't remember specifics.

I know that these may have been amongst others that called.

Q. I see.

MR. DAVIS: No further questions.

JUDGE BARBAN: Mr. Kramer?

CROSS EXAMINATION

Q. (By Mr. Kramer) Is it Mrs. Mandell? A. True.

148 Q. How long have you been with the company? A. Fifteen years.

Q. What is your present position? A. Bookkeeper, full charge.

Q. Bookkeeper? A. Yes, full charge.

Q. Mrs. Mandell, what is the name of the billing clerk in whose tray there was an excessive number of green copies? A. Mary Saidens.

Q. How do you spell her last name? A. S-a-i-d-e-n-s.

Q. Now, limiting yourself solely, Mrs. Mandell, to the telephone calls that you received, that is, you picked up the phone when a customer called -- A. Yes.

Q. -- between February 26th and early March, how many did you, personally, receive, per day? A. I don't recall.

Q. I wonder if you could try to tell the Judge, in essence, when you received one of these calls, what was the nature of the complaint of the customer? A. I can give him the nature of the complaint.

I can't give him the specific customer's name.

149 Q. I'm not looking for the name of the customer. A. Okay.

Q. But in a generic sense, in a -- well, what was their gripe? A. Their gripe was late delivery.

Q. Late delivery? A. Late receiving of merchandise.

Their order had been placed, delivery had been promised for a certain time; they had not received their material.

They wanted to know what was holding up shipment? Why wasn't the shipment out, is what they wanted to know.

Q. And that was it? A. And that was it.

Q. Who does your shipping, that is, physically? A. The shipping clerk.

Q. No.

After it leaves the possession -- the documents leave the possession of the -- A. The carrier that's called.

Q. The carrier? A. Right.

Q. I take it that there are numerous carriers that you use? A. Yes.

Q. Can you give us the name of any customer who called

150 and spoke to you from February 26th to early March? A. No, I can't.

Q. That is, who made a complaint -- let me finish my question. A. I'm sorry.

Q. -- who made a complaint about documents affecting the delivery, the late delivery of the goods? A. About documents?

Q. Yes. A. What do you mean by "documents"?

Q. Documents as compared to late delivery of goods in general. A. I don't understand your question.

Our only document is our invoice and our bill of lading.

Q. Then if your carriers were late in delivering goods to customers during this time period, it would be a problem between you and the carrier, it would not have any relevancy to any of your employees? A. There was no mention as to the date on our document in their complaint.

Q. They just received it late? A. That's right.

MR. KRAMER: No further questions.

MR. BRAND: No further questions.

151 JUDGE BARBAN: Do I understand that based on some of the answers to the most recent questions, that it's your present recollection, Mrs. Mandell, that some of these customers who called in were complaining about late deliveries or no deliveries?

THE WITNESS: No deliveries.

JUDGE BARBAN: No deliveries?

THE WITNESS: Right.

JUDGE BARBAN: They weren't complaining --

THE WITNESS: That the material was received after our billing or something to that effect?

JUDGE BARBAN: Yes.

THE WITNESS: No.

It was that they had not received delivery.

JUDGE BARBAN: And I further understand that all of these calls you're referring to were received while the employees were on strike?

THE WITNESS: More than usual, more than the usual number of calls.

JUDGE BARBAN: But this was while the employees were out on strike?

THE WITNESS: Right, true.

JUDGE BARBAN: Any questions on my questions of the witness or any redirect?

MR. BRAND: No.

152 MR. DAVIS: I have briefly, a couple of questions, your Honor.

CROSS EXAMINATION (Continued)

Q. (By Mr. Davis) I show you Respondent's Exhibit 9B, Mrs. Mandell, and ask if you could tell us whether or not the carrier picked up the goods mentioned in that document (handing)? A. Looking at this document, I would say that the carrier received the material.

I don't know whether they picked it up at our plant or whether we had to deliver it because of a stamp that's on there.

Q. Can you tell from looking at that document, Mrs. Mandell, when the material was delivered to the carrier by respondent? A. I can't see it on the document itself.

All I see is that they did receive it and they initialled it.

I don't see it -- I can't read the date.

It might be in the print here, but I can't read it. It might be in here (indicating), but I can't read it.

I would assume their stamp has a date on it.

If we billed it on the 27th, I would say that it was delivered --

153 I would say they picked it up on the 27th, or something like that.

Q. What did you say, if your bill was dated the 26th, which is -- A. 26th.

I didn't remember it -- I didn't see it.

Q. -- then you would assume what? A. That the carrier received the material on that date.

Q. But this says 2/8 -- A. That's when the original bill of lading was made up for shipment.

That's when the bill of lading, which is a photostat of the original, the number one copy, the material was ready to leave the plant on February the 8th.

It did not leave the plant on February 8th, or else the material was -- the bill of lading was never brought into the office on the 8th.

If we billed it on the 26th, that's when the material went out or when the bill of lading was brought in to us.

Q. So your only reason for saying that the material was not delivered to the carrier before the 26th, was that because your invoice, Respondent's Exhibit 9A, is dated the 26th; is that correct?
A. Would you repeat that, please?

154 Q. Yes.

Your only reason for saying that you know that the material was not delivered to the carrier before the February 26th date, is because your invoice is dated February 26th? A. And we did not have the bill of lading.

Q. But you -- A. An invoice is billed the day or the day after the bill of lading is brought into the office.

Q. But you don't know of your own knowledge, Mrs. Mandell, as to whether or not those specific goods were shipped before February 26th, do you? A. No, I don't.

Q. And is the same true for Respondent's Exhibit 10A and 11A (handing)? A. No, because the bill of lading --

Q. On Respondent's 11B? A. Yes.

-- is dated February 19th and the carrier's signature is February 27th, which proves that he did not pick it up on the 19th, the day that he was called or the day the material was ready for shipment.

Q. So the difference is between February 19th, the date that Mr. Barth prepared this -- A. Right.

155 Q. -- bill of lading and February 22nd, the date he went out on strike? A. The 27th.

Q. The 27th? A. Right.

Q. When did the carrier sign this? A. On the 27th.

Q. The 27th? A. Right.

Q. Okay.

With regard to Respondent's Exhibits 10A and 10B? A. The same thing.

The bill of lading was prepared on February the 19th, the day the material was ready.

It did not leave the plant until the 27th of February when the carrier signed for it.

Q. And your recollection regarding Respondent's Exhibit 10A is because you know that the date that you prepared the invoice was -- A. In accordance with the date of the bill of lading.

Q. Right; okay.

Who performed the duties of Mr. Barth while he was out on strike? A. I don't remember.

156 Q. You don't remember? A. No.

MR. DAVIS: No further questions, your Honor.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: No questions, your Honor.

JUDGE BARBAN: One thing occurs to me, Mrs. Mandell.

THE WITNESS: Yes, sir.

JUDGE BARBAN: Do you have any knowledge as to how soon carriers come to pick up shipments after they are called by the shipping clerk?

THE WITNESS: I don't take note of that.

JUDGE BARBAN: Is there any way I can tell from the bills of lading that are in evidence -- that have been identified thus far, when the carrier was called?

THE WITNESS: The carrier -- our normal procedure is that we date the bill of lading the day the carrier is called when the material is ready.

I'm not there physcially to see that this is done.

But to my knowledge, this is the procedure.

JUDGE BARBAN: That's the procedure?

THE WITNESS: Right.

JUDGE BARBAN: But I have no way of determining whether the carrier was called and just failed to show up?

THE WITNESS: I don't know that.

JUDGE BARBAN: All right.

Any questions on this point?

157 Mr. Brand?

MR. BRAND: No.

JUDGE BARBAN: Mr. Davis?

MR. DAVIS: No, sir.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: No, your Honor.

JUDGE BARBAN: You are excused.

Thank you very much, Mrs. Mandell.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

JUDGE BARBAN: Call your next witness, please.

MR. BRAND: I call Mr. Estrada to the stand, your Honor.

Whereupon,

GEORGE ESTRADA

was called as a witness for the Respondent, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Brand) What is your full name? A. George Estrada.

Q. By whom are you employed? A. Containair Systems.

Q. In what capacity? A. I'm their vice president and general manager.

Q. During the course of the strike, have you also assumed any other function? A. Yes.

I assumed the role of production manager.

Q. Did you perform that function at all prior to the date of the strike? A. Yes.

I would say about, oh, possibly two weeks before the strike, or something like that, the man I had employed was hurt.

Q. And how long have you been employed as the vice president and general manager? A. As the vice president and general manager?

Q. Yes. A. The middle part of December, I believe.

Q. Of what year? A. Of '73; I'm sorry.

Q. Can you tell us what your job duties and responsibilities are? A. Yes.

I --

Q. Generally speaking now. A. Yes.

159 I watch purchasing. I do scheduling. I hire and fire.

General customer relations, I'm involved with.

That's about it, I guess.

Q. What business is Containair engaged in? A. Well, we're a manufacturer of collapsable-type containers for the use of moving cargo for airlines, freight forwarders, trucking companies and the like.

Q. Do these containers -- are they -- when they're manufactured, do they have -- are they painted any particular color? A. Painted?

Q. Yes. A. Well, they're not painted.

We have a few customers who will specify a color.

Delta comes in a white paper border.

Emery comes in a blue paper border.

Most of the rest of the customers use the standard paper border except they might have their names imprinted on it.

But no colors.

Q. To what extent, if at all, is prompt delivery of merchandise important to Containair's business?

MR. DAVIS: Objection.

It's irrelevant, your Honor.

JUDGE BARBAN: Overruled.

160 You may answer it.

A. I believe it's one of the most important functions.

Generally shipping, and particularly with the airlines, their freight-handling system demands almost immediate attention.

So we have to make deliveries almost as soon as the orders are placed.

Q. Can you state whether or not about a week prior to the strike, you received any complaints from customers about the non-receipt of goods? A. Yes, I had been receiving some calls.

Q. Can you tell me about how many calls? A. I'd be guessing it.

I probably received maybe five, six calls.

Q. Did you do anything about the calls? A. Sure.

At this point I had to chase them down and find out where the material was that had been shipped or if it was ready for shipment or maybe it had been picked up and the carrier hadn't delivered.

They all had to be traced.

Q. Did you speak to anybody at the plant about these phone calls? A. Oh, yes.

161 Q. Did you speak to Mr. Barth? A. Yes, I spoke to Mr. Barth on more than one occasion.

I asked him what the status was on a specific order, to which I was told that he would check, which he did.

He went through his paper work and checked and found that it was not among his paper work and it shouldn't have gone out.

MR. KRAMER: Pardon me, your Honor.

I wonder if we could have a period of time?

The question was not contained within the framework of any month or year or week.

JUDGE BARBAN: Well, there was a reference to time in earlier questioning.

Maybe we can pin it down.

During what period of time, Mr. Estrada, in what month or weeks did you receive these calls?

THE WITNESS: Oh, it last -- say, the middle of February, in there sometime, towards the end of February, in there sometime.

JUDGE BARBAN: You said this was before the strike?

THE WITNESS: Yes, sir.

JUDGE BARBAN: Go ahead.

Q. (By Mr. Brand) Mr. Estrada, I show you Respondent's

162 Exhibit 9B, and ask you if you can identify that (handing)? A. Yes.

Q. And what is that?

Do you recall? A. This was a shipment going out to General Electric.

It was dated 2/8, the bill of lading is, anyway.

Q. And have you seen that before today? A. Yes, of course.

Q. And when did you see that before? A. Well, this was one of three or four bills of lading that I found on top of Richard Barth's desk after they had been out on strike.

Q. And, Mr. Estrada, I show you Respondent's Exhibit 10B (handing). A. Yes, this is --

Q. I ask you if you can identify that (handing)? A. This also was among them.

Q. And the same with Respondent's Exhibit 11B (handing)? A. Yes.

Q. Mr. Estrada, can you state who, if anybody, contacted the carriers for delivery of the goods listed in Respondent's Exhibits 9B, 10B and 11B? A. Who countacted the carriers?

Q. Yes.

163 Who processed shipment? A. I processed the shipment. This was after the strike?

Q. That's correct. A. Yes.

Q. You processed those shipments? A. Yes.

Q. I see.

Looking at these exhibits, Mr. Estrada, can you tell on or about what date you processed shipment? A. Well, on the 11A, that's Wilson Airfreight, it was on either February 26th or 27th.

Q. 10A (handing). A. It's the same, February 26th or 27th.

Q. 9A (handing). A. And on 9A, February 25th or 26th, whichever.

We generally invoice the same day or the day after, whenever the bills of lading are handed into the office.

Q. Do you recall, of your own independent knowledge, Mr. Estrada, that in fact you called the carriers on or about the days that you just mentioned? A. Yes, or a day before, or whatever.

Q. Mr. Estrada, can you state whether or not on or about February 29th, 1974, Containair made a delivery to
164 Burrough's Corporation in Piscataway, New Jersey? A. Yes.

Q. Can you tell me the circumstances about that delivery?
A. Yes.

Mr. John Barker, who is our vice president and marketing director, had an order for Burroughs, which was a trial order, pretty important, and this order was a little late.

We had promised delivery I believe the 22nd or the 23rd.

I forget which right now.

Q. Of what month? A. Of February.

Q. Please continue. A. And John decided to make the delivery himself.

When he got there, he found that the delivery had already been made and what he had there was nothing more than a duplicate order.

At that time he called me.

MR. KRAMER: Your Honor, I'm going to object to this testimony and move that it be stricken.

From the face of it, it's hearsay.

MR. BRAND: Your Honor, I think that that --

MR. KRAMER: Another man's mission to Piscataway, New Jersey, and his conversation with their customer.

165 MR. BRAND: Your Honor, I think if I may proceed, that point will not be that important in his testimony.

This is not just based on that conversation.

JUDGE BARBAN: All right.

Mr. Kramer, if you want to repeat the motion later, I'll hear it then.

MR. KRAMER: Thank you.

JUDGE BARBAN: Go ahead, Mr. Brand.

Q. (By Mr. Brand) Please continue, Mr. Estrada.

A. Yes.

John told me that the order had already been delivered and had been received by them, I believe he told me the 19th or 20th or 21st, somewhere in there.

I know it was a few days before the strike.

He was about to bring these back.

I immediately went into the office.

Bess and I checked. There were no bills of lading in the office indicating that this had been shipped.

I went in the back, into the shipping clerk's office and looked for the number 4 copy that's left on the machine or in the machine, I should say. And sure enough number 4 copy indicated that the material had been shipped on that date, whatever it was, I believe the 20th or the 21st.

166 JUDGE BARBAN: You don't know whether it was the 20th or the 21st?

THE WITNESS: I don't remember offhand.

MR. BRAND: May I have these marked, please.

(Documents so marked for identification as Respondent's Exhibits 13 and 14.)

MR. BRAND: Your Honor, I've sent for the original of this to try to avoid the problem that we have run into before, just in case that arises again.

JUDGE BARBAN: All right.

Q. (By Mr. Brand) Mr. Estrada, I show you a document which has been marked for identification as Respondent's Exhibit 13, and ask you if you can identify that (handing)? A. Yes.

This was the bill of lading that John Becker carried up with him and found that it was a duplicate order.

Q. And, Mr. Estrada, I show you a document which has been marked for identification as Respondent's Exhibit No. 14, and ask you if you can identify that (handing)? A. Yes.

This is the number 4 copy that I found in the bill of lading machine showing that in fact it had gone out.

167 Q. And what date do you find on that bill of lading?

A. 2/21/74.

Q. And down at the bottom, the next to the last line next to "shipper per," there's R.B.

Whose initials are those? A. That's Richard Barth's initials.

Q. Do you recognize those? A. Yes, sir.

Q. And is this a true and exact copy of an original document in the company's files? A. It most certainly is.

MR. BRAND: I offer these into evidence.

JUDGE BARBAN: Any objection?

MR. DAVIS: May I have some voir dire of this witness on these, your Honor?

JUDGE BARBAN: Yes.

VOIR DIRE EXAMINATION

Q. (By Mr. Davis) Who prepared Respondent's Exhibit 13, if you know (handing)? A. I believe it's John Becker.

I'm not sure.

Q. And Respondent's Exhibit 14, if you know (handing)?

A. That's Richard Barth's initials.

Q. Do you know when this copy, which is Respondent's

168 Exhibit 14 for identification, was made, the Xerox copy?

A. When the copy was made?

Q. Yes. A. Well, we made two such copies.

We made one after we found the duplicate shipment, and then we made one just recently, I believe.

Q. For the purposes of this trial? A. Yes.

Q. Who wrote on here, on Respondent's 13, "Double order," if you know? A. I believe Mary did this.

She's our billing clerk.

Q. Is John Becker still employed by the company?

A. Yes, he is.

MR. DAVIS: I object as to authenticity and, also, as to relevancy.

MR. KRAMER: Mr. Davis, may I see the documents?

MR. DAVIS: Yes (handing).

JUDGE BARBAN: Mr. Davis, what's your objection to authenticity?

MR. DAVIS: Your Honor, with regard to -- I believe it's -- I don't know whether it's 13 or 14 -- it is not the original document, it's a copy.

JUDGE BARBAN: Well, this is consistent with the objection this morning?

169 MR. DAVIS: The same objection, your Honor.

MR. BRAND: And as I've noted for the record, we intend to try to get that document here before today's session ends.

JUDGE BARBAN: Yes.

With respect to relevancy, I assume it's Respondent's contention that Mr. Barth shouldn't have turned in Respondent's Exhibit 14 for billing?

MR. BRAND: That's absolutely correct, your Honor.

It also caused us to make a double shipment, your Honor.

It had two effects: One, there was no billing that was effected on that and the second one is that we made a rather long trip from Springfield Gardens in New York near the Island, Kennedy Airport, all the way into Piscataway, New Jersey.

JUDGE BARBAN: Mr. Kramer, do you have any objections?

MR. KRAMER: May I have some voir dire?

JUDGE BARBAN: Yes.

VOIR DIRE EXAMINATION

Q. (By Mr. Kramer) Mr. Estrada, concerning Respondent's Exhibit 14, the 4th copy of a bill of lading to Burroughs Corporation, apparently dated February 21, 1974, to your personal

170 where would the other copies be? A. This is what we searched for and could not find.

The other copies should have been handed in to the office for billing purposes.

We could not find them.

This, also, offers us proof of delivery to a customer.

Q. And they were in fact delivered? A. Yes, sir.

Q. What color normally is the fourth copy? A. It's white.

Q. White? A. The bills of lading are white.

The lettering is light blue.

It's the same as the one on your left.

It's just another -- it's just the last copy of the four-part unit.

Q. Which is the green one; the second copy? A. No.

That's in the invoice.

Q. In the invoice? A. Yes.

JUDGE BARBAN: When you say the same as the one on Mr. Kramer's left, you are talking about Respondent's Exhibit 13, are you not?

171 THE WITNESS: I believe so, yes, sir.

JUDGE BARBAN: Very well.

THE WITNESS: They all look the same, your Honor, except they each have a different number in the upper left-hand corner, 1 through 4.

MR. KRAMER: I object on relevancy.

The document is -- has a certain value; but in connection with the issue in this case and with this witness' testimony, it's almost like trying to prove a negative.

JUDGE BARBAN: I guess I have to ask you a direct question, Mr. Estrada.

THE WITNESS: Yes, sir.

JUDGE BARBAN: What effect, if any, did this document, or the circumstances surrounding it, have on your failure to reemploy Mr. Barth?

THE WITNESS: Well, he's cost the company a lot of money, in my estimation.

JUDGE BARBAN: I'm just asking you about this document and the circumstances.

Did it have any affect?

Did you rely upon it?

Did it all figure in your decision?

THE WITNESS: Your Honor, a shipping clerk is a very important part of any organization.

172 This man can make or break you.

This specific area or -- I'm sure it wasn't deliberately -- is only one of many that proved that the man was just incapable of --

JUDGE BARBAN: Well, I asked my question fairly carefully, and that is whether it played any part.

I'm not saying --

THE WITNESS: This specific?

JUDGE BARBAN: Yes.

THE WITNESS: Yes, sir, it definitely did.

JUDGE BARBAN: Which leads me to another question, because I have a difficult problem which I'll have to face after the hearing is closed.

I won't have you to ask then.

What goes through my mind is this:

That piece of paper, the bill of lading, is dated the 21st of February; the strike took place on the 22nd of February, if I remember correctly.

THE WITNESS: Yes, sir.

JUDGE BARBAN: The testimony here is that it is a fairly normal practice to turn in bills of lading the day after the product is picked up by the carrier.

THE WITNESS: Either the day before -- either the same day, I mean, or the day after, in the morning.

JUDGE BARBAN: All right.

173 I want to know whether or not you considered, as just one part of this picture, the fact that the process of the paper from the shipping clerk's office to the billing clerk's office was not disrupted by the strike activity?

THE WITNESS: It could have well been, your Honor, yes.

JUDGE BARBAN: Well, it's something that I have to face.

That's the reason I'm asking you.

THE WITNESS: Yes, yes, sir, I see your point.

It's well taken.

However, I did find some papers on top of Mr. Barth's desk, and I naturally assumed that anything that had gone out the day before should have been also on top of the desk.

JUDGE BARBAN: I'm going to overrule the objection to the receipt of 13 and 14, Respondent's Exhibits 13 and 14.

I think as Mr. Kramer sort of indicated, the matter -- these documents do have relevancy.

The question is what weight they should be given and what credibility they should receive.

That's something I have to decide later.

13 and 14 are received into evidence.

174 (Both documents so marked into evidence as Respondent's Exhibits 13 and 14.)

JUDGE BARBAN: Mr. Brand, please continue.

Q. (By Mr. Brand) Mr. Estrada, can you state whether or not in or about the first week of March, 1974, you conducted an investigation regarding packing lists and bills of lading?

A. Yes.

As Mrs. Mandell testified, we had been receiving quite a few phone calls.

Green copies were too numerous.

It was at this point that I was trying to find out why.

Production had been up to schedule. We had quite a bit of stuff on the floor at the time.

We had taken a short inventory and knew that we had more goods than we should have.

At this point I went into the shipping clerk's office, Mr. Barth's, and started searching.

I found -- I'd say a handful, 15, 20 pieces in all parts of the desk, some in between papers, some under -- some in between some of the files.

They were all over the desk.

Q. And what did you do with those documents after you

175 found them? A. I immediately walked back to the office and -- this was pretty serious.

I got ahold of Joe Velk, Bess Mandell, Mary Saidens, I believe Kenny -- yes, Kenny was involved, Kenny Pregolis, I believe the last name is, and told them what I had found and showed them.

There were some that had carrier signatures on them, which means it had been picked up.

MR. KRAMER: Objection.

A. There were some that were not signed.

MR. KRAMER: Your Honor, I object.

JUDGE BARBAN: What's your objection?

MR. KRAMER: Your Honor, I think the documents, if they ever show up, will be the best evidence of this, of what was on them or what was not on them.

He's talking about documents, not conversations.

JUDGE BARBAN: Well, I have a preliminary question that goes to the way the testimony came in.

Can you identify what these documents were that you are talking about?

THE WITNESS: Mr. Brand asked me the same thing.

He asked me, could I bring some of these documents in?

JUDGE BARBAN: No, I'm not asking you for the specific documents.

176 Up to this point they've been identified as "documents".

I'm asking you, do you remember what kinds of pieces of paper they were?

THE WITNESS: I beg your pardon.

Yes, they were bills of lading, some of which had the packing lists attached to them and some did not.

JUDGE BARBAN: Now, the next question goes to Mr. Kramer's objection.

Am I to understand that as of this time you can't identify the specific pieces of paper?

THE WITNESS: No, sir, I can't.

Mrs. Mandell, and I believe Mary and myself, conducted quite an extensive search in trying to identify which orders they were.

However, as I said, some of them had been shipped out and not been billed.

Some had not gone out.

In some cases we actually made out new bills of lading because the other bills of lading were pretty old.

I have no way of identifying these orders as of right now.

We can try a little further. We were just talking about that this morning, Bess and I, but I don't know.

* * * * *

179 Q. (By Mr. Brand) Mr. Estrada, were you, personally, involved in -- strike that.

Mr. Estrada, can you state whether or not any of these orders had to be processed further? A. Yes.

Q. Can you state -- were you, personally, involved in the processing of any of those orders? A. Yes.

Q. Can you state what was done in that regard? A. Those orders that we found that had not been shipped, of course arrangements were made to be shipped out immediately.

Those orders that had been shipped and not billed, they were billed immediately.

180 MR. KRAMER: I would object and move that this be stricken, your Honor, because it flows directly from the contents of the documents.

In other words, we could not possibly know what would have to be done unless we looked at the documents to see what they contained or did not contain.

MR. BRAND: Your Honor, I think this goes --

JUDGE BARBAN: I don't want any argument about it.

Mr. Kramer, I'm going to overrule your objection on this basis: The witness has testified to what he and the other members of management did.

I'm not concerned with whether or not what they -- I may be concerned with it, but this has no necessary relationship to whether or not they were in error.

What I'm saying is whether or not the documents state what the witness says or indicates, I am accepting his testimony for what the company did.

He says in certain cases they shipped materials and in certain cases they billed customers.

I'm accepting that testimony for what they did.

Go ahead, Mr. Brand.

Q. (By Mr. Brand) Mr. Estrada, on or about February 25th, 1974, did you attempt to make a delivery at Emery Airfreight?

181 A. Yes, I did.

Q. And can you state the circumstances? A. Well, we have an employee by the name of Bobby Gregorio, who I asked to make a delivery to Emery.

He didn't sound too happy about it.

So --

MR. DAVIS: Objection, your Honor.

Characterization of what Gregorio sounded?

JUDGE BARBAN: All right. Overruled.

Let's go ahead.

Q. (By Mr. Brand) Please continue. A. He asked me to go along with him, which I did.

We drove to Emery. And as soon as -- on the way out as soon as we were pulling out, we had a few cars follow us to Emery.

One of the cars was Mr. Barth's.

Q. Can you state whether or not the following day you attempted to make a delivery at Emery? A. Yes.

Q. Can you state the circumstances of that attempted delivery? A. Yes.

Again, we drove over to Emery.

182 Q. Who is "we"? A. Bobby Gregorio and myself.

Q. Please continue. A. And again we were followed.

Q. By whom? A. By Mr. Barth.

We got there and they refused to unload us.

We just drove back and he followed us back.

Q. Mr. Estrada, in or about early March 1974, were there any -- can you state whether or not there were any incidents in which access to Containair's premises were blocked with respect to any deliveries or pickups? A. Yes.

Q. Was Mr. Barth involved --

JUDGE BARBAN: Well, just a moment.

Let's get the answer to the first question.

MR. BRAND: I thought he said yes, your Honor.

JUDGE BARBAN: I didn't hear it.

THE WITNESS: Yes, sir, I did.

JUDGE BARBAN: I'm sorry.

Go ahead.

Q. (By Mr. Brand) Was Mr. Barth involved? A. Yes, he was.

Q. Can you state the circumstances of Mr. Barth's involve-
183 ment? A. Mr. Barth was parked on our -- not in but a little into our driveway on the large door opening in the front.

He was just pulled in enough into the driveway to prevent a truck from pulling in.

I believe, about three trucks that morning pulled up, first two trucks -- the first two trucks that pulled up Mr. Barth walked out of his car, approached the truck, spoke to the driver for five, ten minutes, and the driver then drove away.

A third truck I believe was -- he came into the office, told us that he couldn't make the delivery, asked if he could call his office, which he did.

He, also, drove away without making a delivery.

Q. Did you have any -- did you have any other similar occurrences on any other days? A. Yes.

Q. Can you tell about that? A. One or two days later, I believe, we had the same thing.

There was another one or two trucks -- I believe it was only one truck.

Again Richard spoke to him.

Again, the truck driver drove away. I think there were two. Yes, there were two trucks.

He spoke to both of them. They pulled away.

184 A third truck was a lumber truck that actually agreed to make the delivery. He came in.

Q. Do you know the name of the company, the lumber company? A. Yes, Woodex Lumber.

Q. And what happened with respect to the Woodex truck? A. I went in, called Joe Velk to unload the truck.

I went outside and asked Richey Barth if he would please move his car, which he did, he backed up a little bit.

The truck started to pull up but the lumber was too long, we couldn't unload him by the door opening.

So Mr. Velk actually generally handles that, so what he did was he asked the truck to pull out into the middle of the street and we generally unload it that way.

At which time, Richey Barth pulled up -- pulled out, I should say, from the curb, went up about 200 feet and picked up two of the fellows that were picketing, he turned around and he pulled up in front of the lumber truck and up to a car that was parked by the curb thereby actually blocking the lumber truck from moving so that Joe Velk could not unload the lumber off the truck.

185 Q. Did you speak to Mr. Barth after this transpired or during the time it was transpiring? A. Yes.

I went up to him.

I asked him to please move the car because it's blocking the street.

He was a little excited and a little abusive at that time.

He claimed that if that truck had a right to block the street, that he had, too.

I asked him several times and he kept saying no. At which time I threatened him with calling the police, which I did.

I went inside to call the police.

At which time, the next time I looked around, he had pulled away.

Q. How long did -- how much time did the incident involving the Woodex truck take? A. You mean the total number of time to unload it?

Q. No.

The total incident involving Mr. Barth and the Woodex truck.

A. Oh, 20, 25 minutes.

Q. On March 15th, 1974, can you state whether or not you had a conversation with Mr. Barth in the morning? A. March

186 15th?

Q. Yes. A. Yes.

This is the morning I had asked all the men to come back and --

Q. Excuse me.

Can you tell me what you told Mr. Barth on that occasion?

A. Yes.

It was at this time that I told him that I couldn't put him back to work at this time, that he was being investigated on a few of the incidents that had occurred during the strike and that I would let him know.

MR. BRAND: I have no further questions of this witness.

JUDGE BARBAN: Mr. Davis.

CROSS EXAMINATION

Q. (By Mr. Davis) Mr. Estrada, you told Mr. Barth that he was being investigated regarding certain incidents that occurred during the strike? A. Yes.

Q. What incidents did you refer to?

Did you mention any incidents to him, first of all? A. Did I mention any incidents?

187 Q. Yes. A. No, I mentioned no incidents to him.

Incidents that I was referring to, of course, are those few that I mentioned, particularly some of the problems we have had with the customers and with the bill of ladings, the mixup.

Q. Well, that didn't occur during the strike did it?

A. It occurred while he was employed.

We didn't know at this time whether we would want him back or not.

Q. You didn't tell him precisely which incidents you were referring to, did you? A. No, I did not.

Q. I see.

Now, Mr. Estrada, you testified that you asked Mr. Barth to move his car because of the Woodex truck.

that right? A. Yes.

Q. And he agreed to move his car; is that correct?

A. While he was parked in the driveway?

Q. Yes. A. Yes, he did, he backed up.

Q. He backed up? A. Yes.

188 Q. And you said you would call the police if he did not; is that correct? A. No, sir, not at this time.

After -- in fact, as the truck started to pull into the driveway, we found out that the lumber was too long to unload in the driveway, so the truck pulled out into the middle of the street.

At which time, then Mr. Barth pulled out from the curb, drove around and then he blocked the truck again, facing the truck.

This is the time that I threatened him with calling the police.

Q. And what happened then? A. After I asked him two or three times to move the car and he refused, I went inside to call the police.

Q. Was the truck being unloaded at that time -- A. No.

Q. -- that you went in? A. No.

Q. And did the police come? A. No, they never did.

Q. They never came? A. No.

Q. Had the police been at the plant before this time?

A. Oh, yes.

189 Q. When the police didn't come and did you call them and say: Look, you didn't come, we have a problem here? A. No.

At that time, Richey had already moved, so there was no point in aggravating the matter any further.

Q. And the truck was unloaded? A. Yes, it was.

Q. Without incident? A. Right.

Q. Did you call the police on other occasions? A. Yes.

Q. Each time did the police come? A. Not all the time.

Q. How many times did you call the police? A. I, myself, personally, must have called them maybe four or five times.

Q. How many times did they come? A. I know of one time only that they didn't come.

A couple of times Mr. Kupersmith called and they didn't come.

Q. Now, could you tell us what happened one week before the strike with regard to Mr. Barth and the performance of his work?

A. Well, we had received a few calls from customers who were awaiting their goods and hadn't received them.

190 Q. Do you know who called? A. No, not offhand.

Q. Did you receive the calls? A. I received some, yes.

Q. Then what happened? A. Then --

Q. Excuse me.

About how many calls did you receive? A. Three or four calls.

Q. And what did you do then? A. I went in the back and spoke to Richey to see where this material was.

He looked through his papers and he claimed that he did not have the packing list or the bill of lading on it, so, therefore, the goods had been shipped.

Q. You said that there could have been three or four calls.

Could it have been as many as five to six calls? A. Oh, yes.

Q. And what did Mr. Barth tell you? A. At that time?

Q. Yes. A. The fact that he did not have the paper work on this, which means that the goods had been shipped.

Q. And then what happened? A. Nothing. I just took him at his word.

191 Q. Did you call back the customer? A. Yes.

We then started to look at this point to see if carriers had been -- you know, picked up.

We couldn't find any more paper work.

We had to assume that it was mislaid or what in the office.

This was the first occasion that we had that paper work was missing.

Q. Well, did you call the carriers themselves? A. Without the paper work we wouldn't know what carriers were called or what carriers handled it.

Q. How many carriers do you deal with? A. Quite a few.

Q. About how many? A. Off the top of my head, Mr. Davis, I would say maybe 15, 20.

I really don't know.

Q. Are these carriers -- do they work by geographical region so that you would -- A. Only the delivery part of it.

Q. Right.

So that you would call a specific carrier to deliver in a specific area for the customer; is that right? A. Yes, sir.

192 Q. So you could be able to tell from the customer who called which carrier might have delivered that? A. Not necessarily.

There could be as many as ten carriers handling that one area.

Q. But you'd have an idea? A. Possibly.

Q. At the time that you asked Mr. Barth, did you ask him to look in his desk or look in his work area for any papers that might have been mislaid? A. I didn't ask -- I didn't have to.

He did himself on his own.

Q. You watched him do that? A. Yes.

Q. And he didn't -- and he couldn't find anything? A. That's correct.

Q. While you were watching? A. That's correct.

Q. Did you watch him open his desk drawer? A. I don't know whether he opened his desk or not.

I think he had all of the paper work on, like, a clipboard.

Q. On top of his desk? A. Yes.

193 Q. I see. A. I wouldn't swear to that, but I don't remember his opening his desk, no.

Q. Did you ever have any problem like this before with Mr. Barth? A. I wouldn't know.

I wasn't with the company prior to this.

Q. Who was acting in your function before? A. There really was no one there acting in my function before I came.

There was a man that was in charge of production by the name of Denny Cohan.

Q. Well, you came with the company in December; is that not so? A. That is correct.

Q. So that you were working there for at least a month -- A. That's correct.

Q. -- before this occurred and possibly two months? A. Yes.

Q. From December until the week before the strike, did you ever have any similar problem with Mr. Barth? A. Minor incidents really that he was just learning and needed a little attention, nothing serious, no.

Q. No problem with misplaced orders or -- A. Well,
194 mishandling of the order, but nothing serious of any kind, no.

Q. How many times did that occur? A. Oh, gee. Wrong paper work was really about the most common mistake he made.

Leaving something out of the bill of lading, you know, he didn't fill it out properly or something like that, I don't know.

I'm guessing now, but two, three times; I don't know.

Q. Did you warn him that he'd be discharged if he did that again? A. No, I did not.

Q. But no problem with regard to failure to bring forward a bill of lading that had once been prepared during that time period, December to a week before the strike? A. To my knowledge, no.

Q. Now, what did you find on the top of his desk during the strike with regard to bills of lading? A. There were about three or four bills of lading on top of his desk.

Q. And what did you do with them when you found them? A. Took them in the office and we processed them immediately.

Q. When did you find them? A. Oh, about -- it must have
195 been around 24th, 25th in there sometime.

Q. February 24th or 25th? A. Something like that.

Q. And you processed them personally? A. Yes, I did.

Q. Do you remember who you called? A. Well, one of them was Wilson Airfreight.

They make their own pickup. And because of the strike, they wouldn't cross the picket line.

So I made arrangements with our truck to deliver.

Q. When did your truck deliver? A. I don't remember the date, offhand.

Like I said before, I think it was the 25th or 26th or 27th, whatever the date was -- whatever the invoice says as to the date.

Q. With regard -- I show you Respondent's Exhibit 11A and ask if you remember when you called Wilson Airfreight (handing)? A. We didn't call Wilson Airfreight, we delivered ourselves to Wilson Airfreight.

Q. And did you call a carrier, though, with regard to that delivery? A. No.

Q. You didn't call a carrier? A. No.

196 Q. You made arrangements with your own truck?

A. Yes.

Q. But didn't you call a carrier and they told you they wouldn't cross the picket line? A. At the time, quite a few carriers that we had called for other pickets -- at this point we were already making arrangements for ourselves to drop off at carriers.

Most of the carriers are all unionized and they will not cross a picket line.

Q. Do you know that for a fact or did they tell you this when you told them there was a strike, when they told you that they would not cross, that they're unionized and would not cross a picket line? A. Well, it was quite a few trucks that came in, some to make pick-ups and some to make deliveries, and they wouldn't cross.

Q. General principle is they won't cross? A. Whatever the reason is they have, I don't know.

Q. Now, with regard to General Electric, could you tell us if you processed Respondent's Exhibit 9A personally (handing)?

A. Yes, I believe this is one of the ones we delivered to them.

Q. You, yourself? A. No.

197 Q. Your truck? A. Yes.

Q. Your truck? A. Yes.

Q. And you didn't call a carrier for that one, either?

A. No.

Q. What about 10A, did you call a carrier for this one (handing)? A. No.

Oneida had been originally scheduled for it.

I believe John Becker delivered this.

I'm not sure, but I believe he did.

Q. Didn't you testify that you made calls to carriers --

A. Oh, yes, I did.

I made quite a few calls.

Q. -- attempting to obtain deliveries of your products?

A. Attempting to make pickups for our products.

Q. To make pickups? A. And deliveries also, yes.

Q. Did you make any calls on February 27th, the date of Respondent's Exhibit 10A? A. Yes, I made some calls.

Q. Do you remember who you called? A. Not really.

198 Q. Carriers? A. Oh, yes, I called carriers.

I call carriers practically every day.

Q. Do you remember what else you did on February 27th?

A. What else I did?

Q. Yes. A. I don't know.

What are you looking for?

Q. Well, what time did you call carriers on February the 27th? A. Various times of the day.

Usually in the mornings.

Q. Do you remember anything else that occurred on February 27th? A. Not at the moment.

Q. Now, during the course of the strike, did you have occasion to walk through the factory area? A. Yes.

Q. How many employees were at work during the first week of the strike? A. Not many. In the first week of the strike, I believe we had something like, oh, anywhere from 8 to about 11 employees.

Q. Out of how many? A. Out of -- oh, I think we had
199 something like 32 or 33 at the time, that is, just prior to the strike.

Q. Was production at a hundred percent of what it had been the week before, the week before the strike? A. Production had been pretty good.

The fact is that a couple of days before the strike, we had just laid off three men.

We had been right up to snuff. In fact, we had very few D containers to produce at that time.

Q. You could have gotten along without the other employees that were out on strike; is that right? A. Not really.

We had just laid off three men, and we were moving some of the men back in from the woodworking shop. We were planning to start moving the plane around to change over from one area to the other.

This had been in the back of my mind.

Q. By the way, do you recall if I was at the plant on February the 27th? A. I recall you at the plant. The exact date you were there, I don't recall.

Q. You don't remember the date? A. No, not the exact date.

Q. But you remember on February the 27th that you made some calls to carriers? A. I'm pretty sure, yes.

200 Q. Now, during the strike, when was the first instance that you heard that certain goods were not shipped out during the strike? A. The first week of March, I guess.

Q. Not before? A. You said during the strike.

Q. When did the strike begin? A. February 22nd.

Q. When was the first instance during the strike that you heard that no -- that goods were not shipped out? A. Oh, actually around the 25th --

Q. Improperly, that is. A. Oh, actually around the 25th, I would say.

Q. How did you hear of it at that time? A. The 25th, the 26th, somewhere in there.

We had been getting calls.

Q. You don't recall who the calls came from? A. No, not really.

Q. What did you do in response to the calls? A. Chased the goods down, of course.

Q. About how many calls did you receive? A. I, personally?

Q. Yes. A. I'd say maybe three, four.

I don't really recall.

201 Q. How did you chase them down? A. I first chased the paper work to see where it was, what's on the order.

Q. Did you -- A. Then to --

Q. Go ahead. A. Then to see what the status of it was that the material had been finished, and everything at that time had been finished.

Then went in the back to see if bills of lading had been made out against the order.

Q. Did you look for those bills of lading? A. Yes.

Q. When did you look for them? A. The first time was when I found these few on top of Richey Barth's desk.

Q. When was the second time? A. The second time was a few days later.

Q. Now, the first time when you found those, Mr. Estrada, did you look any further for any others? A. Not for bills of lading.

I looked through -- he still had some -- he still had a couple of -- the packing list on the clipboard, but I didn't look any further, no.

He generally kept all of his paper together.

202 Q. Well, did you know the first time that you looked that there were other orders that were missing and that they certainly, too, could have been on his desk? A. No.

In fact, what I did at that time was that I took the yellow copies that he had up there that he had not made out bills of lading for.

This was just given to him at the last minute so he wouldn't have had a chance to do it.

We processed those through, too. But I did not look any further in the desk.

Q. Which one was given at the last minute?

Is that Respondent's Exhibit 14 (handing)? A. No.

Q. Do you recall which one that was? A. I was referring to the invoices that were given to him at the last minute that he had not had a chance to make out bills of lading against.

Q. When you say the last minute, when was that? A. Oh, probably a day before the strike.

Q. The 21st? A. Probably.

Q. It could have been the 20th, too? A. Perhaps.

203 Q. Possibly the 19th? A. I doubt it.

Q. Now, what happened the first week of March regarding Mr. Barth's work? A. This is where we started getting a lot of phone calls.

Q. About how many? A. Plenty of us would get calls there.

I would say a total of maybe 15; I don't know.

Q. How many did you receive? A. Personally?

Q. Yes. A. Guessing, maybe five, six; I don't recall.

Q. Well, to the best of your recollection, Mr. Estrada, about how many -- A. To the best --

Q. -- did you, personally, receive? A. To the best of my recollection, maybe five or six; I don't recall exactly.

Q. Do you recall any names of customers who called? A. No, no.

I tell you one guy that probably called, I wouldn't swear to it, but knowing him, Stephen Gould.

Q. You're not sure about him? A. No, I'm not.

Q. And what did you do in response to these calls?

204 A. Checked to see if the orders were out.

Q. And how did you do that? A. Very simply by going through the green copies.

If the green copies were still there, that meant that the orders had not been shipped.

Q. The green copies were where? A. On Mary Saidens' desk.

She has them in a tray.

Q. And were they there? A. Yes, they were there.

Q. That meant they were not shipped? A. That's correct.

Q. What do you do then? A. I went to the back to see if there was any other paperwork up there, the bills of lading that had been made against the invoice.

Q. And what did you find? A. There were none.

Q. They were not there, either? A. Right.

Q. You made a careful search? A. It was after this that we started saying, you know, there's something drastically wrong and there's got to be an answer.

205 So, at this point I started looking through Richard Barth's desk.

This is when I found the handful, the 15 or 20 pieces, whatever there were.

Q. Well, where did you look before when you said you couldn't find them? A. Where he generally kept them.

He kept them on a clipboard on top of his desk.

Q. And then where did you look to find them? A. When?

Q. You said you found them ultimately. A. I looked through his desk.

They were inside his desk in different drawers, in different places in the drawers.

Q. How many drawers are there in his desk? A. Well, the right-handed side has a small drawer and a large drawer in the bottom that has files.

I found some in there.

The left-hand side of the desk has, I believe, three or four small drawers.

Q. Did you find them in each drawer? A. Not in each, no.

In some. Most of them I found in the right-hand drawer in the bottom where the files are.

Q. How many did you find at that time? A. Fifteen or twenty.

206 Q. And isn't it true that you made out new bills of lading at that time? A. In some cases I had to, yes.

Q. And in any event, you would have kept or you did keep certain of the ones that you found? A. Well, under normal conditions this is what I would have done, yes.

Apparently, Mary Saidens did not.

I think she threw some of them away.

Q. But you would in the course of your business, retain certain of the copies of the new bills of lading that you prepared, would you not? A. The new bills of lading?

Q. Yes. A. Most definitely.

Q. I see.

Now, when you testified that Richard Barth followed you, the truck, to Emery and back again -- is that correct? A. Yes.

Q. -- did any incidents occur while he followed you back and forth? A. Absolutely none.

Q. He made no gestures, no threats? A. If he did, I did not hear them.

207 Q. Did he attempt to push your truck off the road with his car? A. Most certainly not.

* * * * *

211 JUDGE BARBAN: Are you gentlemen willing to stipulate that it was an economic strike?

MR. DAVIS: Yes, sir.

MR. BRAND: Yes, sir.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: Yes, sir.

JUDGE BARBAN: All right.

Now, let's go on.

212 Q. (By Mr. Davis) Mr. Estrada, when was Mr. Barth replaced by another employee? A. I believe it was very early.

Let me see now.

I believe it was very early April.

Very early April was really the first time the move was made.

Q. Could it have been early May, 1974? A. Early May?

Q. Yes. A. I beg your pardon, yes, May.

Q. Now, how many times did Mr. Barth speak with you from the period March 13th on? A. Twice, I believe.

Q. What dates? A. I beg your pardon.

Perhaps maybe three times.

I think the 14th when they showed up in the morning.

Then he called that night or whether when he came back at 10:00 o'clock, I don't recall whether I spoke to him then or not, but I spoke to them as a group to call back later that evening.

I still hadn't gotten in touch with our attorneys.

I believe he called that night.

213 I told him to come back in the morning, at which time we were having a meeting with our attorneys and all the decisions would have been made on every one.

Q. Did he call back? A. He came in the next morning, yes.

I believe it was the 15th.

Q. What did you tell him then? A. Well, at this point I told him that we were investigating a few incidents that he might have been involved in and that I couldn't put him back to work at this time and he would be informed as to what the outcome of this investigation would be.

* * * * *

216 MR. KRAMER: Thank you.

THE WITNESS: You're welcome.

Q. (By Mr. Kramer) Beginning December 1973, what was your position with the company? A. December 1973?

Q. Yes. A. I'm not sure of the exact date of when I started.

THE WITNESS: Bess, do you recall?

MRS. MANDELL: I don't know exactly, but I think it was in December.

A. I know it was in December, Mr. Kramer.

I'm not sure of the exact date.

I beg your pardon, the 19th.

Q. All I asked was beginning December 1973, I didn't ask the date.

I just wanted to know the month and the year. A. Oh, I was employed and taken on by Containair as their vice president and general manager.

Q. And I believe you stated that you have the authority to hire and fire.

Is that correct? A. That is correct, sir.

Q. Now, the company, I believe you testified manufacturs collapsible containers for the air cargo industry; is that correct? A. Air cargo, freight forwarders and trucking or independent companies, of course.

217

Q. Prior to your employment with Containair, had you ever worked for an air cargo company or a freight forwarder?

MR. BRAND: Objection.

Q. (By Mr. Kramer) Or a carrier?

MR. BRAND: Objection.

JUDGE BARBAN: What's the purpose of the question?

MR. KRAMER: This witness has made certain -- has given certain testimony as to the prompt delivery or service of his company.

I'd like to ask him a few questions in that regard.

JUDGE BARBAN: Objection overruled.

A. I worked with -- I've been working with the airlines for a great number of years, yes.

And prior to this, I was employed by Morino Systems, Incorporated, who also dealt primarily with steamship companies and mostly with airlines.

Q. Are you aware that air cargo companies and other freight forwarders, by law, are under a duty to provide delivery
218 within given times? A. Yes, sir.

Q. Would you please tell the Judge under what law, if any, your company has to provide a product to your customers?

A. Very simply.

MR. BRAND: Objection.

A. The law of survival.

If we don't, they're going to get it elsewhere.

Q. In other words, there's only a business reason, there is no Federal requirement or state requirement? A. None whatsoever.

It's all strictly economic.

Q. Thank you.

JUDGE BARBAN: Do you have anything further, Mr. Kramer?

MR. KRAMER: Yes.

JUDGE BARBAN: Proceed.

Q. (By Mr. Kramer) Now, Mr. Barth, I believe, was replaced in early May of 1974.

Is that correct? A. Well, let me see.

April of 1974. It was very early April of 1974.

Q. But this indeed was sometime after your conversation,
219 either March 14th or 15th, with Mr. Barth when he came in to see you individually; is that correct? A. That's correct.

Q. I believe you previously stated that during the period of the strike, you, yourself, chased down bills of lading on occasion.

Is that correct? A. Yes, I did, sir.

Q. Well, from the period February 22nd through, say, March 13th, who in fact had the job function as shipping clerk, or was it divided among a group of people? A. Well, at the time of strike, of course, is a time for all vice presidents to wear all kinds of hats.

We had a vice president making deliveries.

We had another vice president making some calls and loading trucks and what-not.

I believe everybody turned to and everybody contributed.

Q. But I would take it that during this time of possible crisis for the company, there was no one individual who was primarily and uniquely responsible for the job function of shipping clerk? A. Not really, no.

Q. You said that prompted by some telephone calls from customers, say, during the first week of March, you conducted an investigation -- A. Yes, sir.

220 Q. -- at which time, I believe, you looked on top of, in and around Mr. Barth's desk.

Is that correct? A. That's correct.

Q. What was the date of the investigation? A. Oh, I can't tell you the exact date, but it was the week of the 25th.

Q. Now, I believe you stated that there was some three or four bills of lading that you originally found, perhaps on February 24th or 25th. A. That's correct, sir.

Q. Then, thereafter, during this investigation that you conducted, you found some 15 or 20 documents, whatever they were.

Is that correct? A. Right.

By documents, I was referring to bill of ladings and packing lists.

Q. Now, of the 15 to 20 bills of lading and/or packing lists that you found, how many did Mary discard? A. I have absolutely no idea, Mr. Kramer.

The fact is -- well, I'll go one step further.

I'm not even sure she did or not discard any.

I'm assuming she did simply because I believe that we should have found at least one or two that would have indicated that the date

had been -- assuming that it was late enough, let's say it would be early February.

Q. Well, in preparation for this hearing, Mr. Estrada, did you and Mary and, say, others in the office have occasion to look for the -- A. We most certainly did, Mr. Kramer.

Q. -- 15 or 20? A. Yes, sir.

Q. And they had been found previously, but you were not able to relocate them? A. Identify which ones they were.

They're there. We found them. They were processed.

Now, in the act of processing this, this has just melted in with the rest of them.

Now, to be able to identify which one is what we have not been able to do.

Q. I see.

In your capacity as vice president and general manager, Mr. Estrada, did you directly supervise Mr. Barth? A. Only the tail end of it.

I had a production manager who was directly responsible, who Mr. Barth worked directly under him.

His name was Abe Rubenstein. He hurt his leg. For the last
222 few weeks just prior to the strike he wasn't able to come in.

That's why I testified that I had just taken over as acting production manager.

Prior to that time he did not report directly to me, he reported to my assistant.

Q. To this Abe Rubenstein? A. That's correct.

Do you know if Mr. Rubenstein ever warned or reprimanded Mr. Barth in connection with his job duties? A. In all fairness to Mr. Barth, I would say no, I do not know.

Q. And, to your knowledge, or from your recollection of the company's records, apparently -- approximately how long had Mr.

Barth been at this, well, what is loosely described as shipping clerk's duties? A. Mr. Barth testified that he started this October.

I didn't want to open up a can of worms.

He really didn't start. He was helping load trucks at this point, but he really didn't take over those duties until approximately early January, when I told him officially that he was going to take over such duties.

Q. Was he doing paper work prior to January? A. I wouldn't swear to it.

I will take him at his word that he did do so.

Q. By the way, do you recall the name of the -- strike
223 that, please.

With regard to the Woodex Lumber truck incident -- A. Yes.

Q. -- was there a driver and a driver's helper, or was there just -- A. There was just a driver.

Q. Just a driver? A. Yes.

Q. Do you recall his name? A. We're right now trying to get his name.

We know the name of the company that delivered for Woodex.

They don't own their own trucks, they use a carrier that handles lumber.

We have this information available, and we are trying to get the driver's name.

Q. Now, during this discussion in the middle of March with Mr. Barth about the fact that you couldn't put him back to work because he was being investigated concerning these incidents -- A. Yes, sir.

Q. -- isn't it a fact that you never mentioned anything about paper work? A. I made absolutely no mention to him as to what the reasons were other than incidents.

224 Q. Incidents? A. That's correct.

Q. Is that the word you used? A. That is correct.

Q. I see.

MR. KRAMER: I have no further questions, your Honor.

JUDGE BARBAN: Mr. Brand?

MR. BRAND: Yes.

REDIRECT EXAMINATION

Q. (By Mr. Brand) Mr. Estrada, can you tell me at about the time of the strike, when the strike occurred, at about that time, how many total employees, including all of your management personnel and your office employees and production employees, roughly how many total employees Containair had? A. Total prior to strike?

Q. Right, approximately. A. Do you want to include the office personnel?

Q. Yes, everybody working as an employee for Containair. A. I would say approximately 38.

MR. BRAND: I have no further questions.

MR. DAVIS: I have nothing further.

225 JUDGE BARBAN: Mr. Estrada, does Mr. Kupersmith have the right to hire and fire?

THE WITNESS: Yes, sir.

I'm not going to tell him he hasn't.

(Laughter.)

JUDGE BARBAN: Well, just so you understand that it was not an idle question, in the answer to the complaint, counsel declined to agree that either you or Mr. Kupersmith were agents of the company.

Quite properly he had a right to do that.

But I also want to know what the facts are.

On or about March 15th, -- I'm using that as the date -- at that time, did you have any knowledge as to anything that Mr. Barth may have said to any of the truck drivers during the strike?

THE WITNESS: No, sir.

I only witnessed Mr. Barth talking to the drivers.

What he said to them, your Honor, I have no idea of.

JUDGE BARBAN: But as of the date that you told him that you were investigating him, you didn't know anything he might have said to the drivers, all you saw was that he had talked to the drivers?

THE WITNESS: That is correct, sir.

JUDGE BARBAN: With respect to the several, I think four,
226 five or six complaints you had from customers about deliveries prior to the strike -- now, you have testified that you went to see Mr. Barth and he said that he didn't have any papers on them and, therefore, they must have been delivered.

THE WITNESS: Yes, sir.

JUDGE BARBAN: Would you tell me what else you did in checking up on those four or five or six, if anything?

THE WITNESS: At this point, I felt -- I felt that Mr. Barth was saying -- was telling me the truth.

He had no reason to lie to me. If he did not have that paper work, the shipments had thereby gone out.

JUDGE BARBAN: Did you have any further contact with the customer who called?

THE WITNESS: No, sir, I didn't, whereas I should have.

I naturally assumed -- and I was wrong in my assuming this -- that the goods had been picked up and they were late on delivery because of the carrier.

JUDGE BARBAN: Well, my question was whether you had any other contact with the customers after you got this information from Mr. Barth?

THE WITNESS: I beg your pardon.

I misunderstood.

227 Yes, I believe there was a second time around when we received some more calls.

I believe there was one instance when the same customer called back on the same order, yes, sir.

JUDGE BARBAN: One instance?

THE WITNESS: Yes, sir.

JUDGE BARBAN: What about the others?

THE WITNESS: I don't think, off the top of my head -- I don't think any of the other ones were related.

JUDGE BARBAN: With respect to the one customer that called back, did you go into your office and check out whether there was any paperwork in the office?

THE WITNESS: Yes, sir, I did that the second time.

JUDGE BARBAN: What did you find?

THE WITNESS: I found that there was absolutely no paperwork in the office indicating that a shipment had been made.

JUDGE BARBAN: Mr. Davis, anything from you?

MR. DAVIS: Nothing further, your Honor.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: Just one thing, your Honor.

RECROSS EXAMINATION

Q. (By Mr. Kramer) Mr. Estrada, I show you Joint Exhibit 1 and Joint Exhibit 2, in evidence and refer you to the box indicating the number of workers employed, which indicates 31.

228 Does that refresh your recollection (handing)? A. Sir, this means number of workers employed.

Probably whoever filled this out --

Q. Being your attorney. A. That's correct.

-- might have been referring only to the number of employees involved in the plant, not necessarily that the question was asked whether it included the office or not, and this is why I answered 38.

Had the question been asked, the number of production employees, I would have replied approximately 30, 31, that's correct.

* * * * *

234 JUDGE BARBAN: All right. Thank you, gentlemen.

Now, I have Respondent's Exhibit 12 on which I reserved ruling.

* * * * *

235 Mrs. Mandell stated -- and I will put it in this form: That if called as a witness, she would testify that she directed one of the clericals to type that last line on the company's invoice copy on the same day as the carbon was made.

Do you gentlemen have any problem with the statement I have just made?

Mr. Davis?

MR. DAVIS: I'm afraid I can't stipulate to that statement, your Honor.

JUDGE BARBAN: Which part distresses you?

MR. DAVIS: Well, specifically that it was typed on the same day as the invoices --

JUDGE BARBAN: No.

What I said was that if she was called, she would so testify.

Do you want her -- this goes to the point of her being recalled to the stand or not.

MR. DAVIS: I don't know that her recall would serve any purpose.

JUDGE BARBAN: Well, we have got to have --

MR. BRAND: You are stipulating as to --

JUDGE BARBAN: Just a moment.

MR. BRAND: Yes.

JUDGE BARBAN: We have to have it one way or the other.

236 If you won't stipulate that she would so testify, then I would have to have her come back and testify.

MR. DAVIS: Okay.

Upon reconsideration, your Honor, I will stipulate to your statement as made, that if called she would testify to that effect.

JUDGE BARBAN: Mr. Kramer?

Now, of course, if you want her recalled, she is subject to cross-examination on this point.

MR. KRAMER: I have no objection to that.

JUDGE BARBAN: Mr. Brand?

MR. BRAND: I have no objection to the statement.

JUDGE BARBAN: All right.

* * * * *

246 MR. BRAND: And anything else we so testified to?

JUDGE BARBAN: Look Mr. Estrada -- I know this is easier to say than it is to do because it probes the man's mind.

247 But, Mr. Estrada had to know why he made the decision not to take Mr. Barth back.

I would assume that if he's a rational client, he told you.

MR. BRAND: Yes.

We have relied on a whole sea of conduct, both strike conduct and including the discovery during the course of the strike of his work activities at the plant which took place prior to the strike.

* * * * *

253 RICHARD BARTH

having been previously duly sworn by the Administrative Law Judge, resumed the stand and testified further as follows:

DIRECT EXAMINATION

Q. (By Mr. Davis) Mr. Barth, have you ever been warned or reprimanded about your work by anyone at Containair? A. No.

Q. Now, with regard to the performance of your shipping clerk duties, could you tell us when you would call a carrier with regard to a shipment that had to be made? A. Right after I wrote out the bill of lading.

Q. And did you do that in each instance? A. Yes.

Q. Did anyone warn you at the company that you were not doing that properly? A. No.

Q. Did you ever tell Mr. Estrada, or anyone else at the company, that orders had gone out when in fact they had not gone

254 out? A. I did not tell them that.

Q. Did you ever hide or bury any orders or bills of lading in your desk drawer or conceal them in any way? A. No, I didn't.

MR. DAVIS: No further questions.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: I have no questions of Mr. Barth, your Honor.

JUDGE BARBAN: Mr. Brand?

MR. BRAND: Could you read back the last couple of questions? I missed them.

(Record read.)

MR. BRAND: May I have a moment, your Honor?

JUDGE BARBAN: Yes.

MR. BRAND: I have no further questions of Mr. Barth, your Honor.

JUDGE BARBAN: You are excused.

Thank you.

(Witness excused.)

MR. DAVIS: No further rebuttal, your Honor.

JUDGE BARBAN: Mr. Kramer, any further rebuttal at this point?

MR. KRAMER: No, sir.

JUDGE BARBAN: All right.

Gentlemen, do any of you at this point want to make

255 an oral argument as to this case?

I am making that statement because in the event that Mr. Brand does not call any further witnesses, you will have no other opportunity to make oral argument.

Do you have any?

If you do, this is your time to make it.

MR. DAVIS: I elect not to do so, your Honor, but I would, of course like to file a brief.

MR. BRAND: I join in that.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: Yes, your Honor.

JUDGE BARBAN: Do you want to file a brief, too?

MR. KRAMER: Yes, your Honor.

JUDGE BARBAN: Gentlemen, just to make it clear, this is an unusual situation, and I want to make sure that everyone understands.

By September 30th I expect Mr. Brand to notify each of us as to whether or not the desires the hearing to be resumed.

Telephone will be all right, but I would expect it to be confirmed in writing.

MR. BRAND: Yes, sir.

JUDGE BARBAN: If Mr. Brand says he wants the hearing to be resumed, we will meet at the time and place I've previously stated, in this room, 11:00 a.m. on October 3rd.

256 If he says that he has no further evidence to present, I will issue an order closing the record and setting a time for the filing of the briefs.

Now, is there any comment from any of the parties with respect to this procedure that I have just outlined?

Mr. Davis?

MR. DAVIS: No, sir.

JUDGE BARBAN: Mr. Kramer?

MR. KRAMER: No, sir.

JUDGE BARBAN: Mr. Brand?

MR. BRAND: No, your Honor.

JUDGE BARBAN: Everybody understands and apparently has no objection that has not already been voiced.

Unless someone has some other comment or statement to make at this time, the hearing stands adjourned until Thursday, October 3rd, 1974, at 11:00 o'clock a.m. in this room, subject to a prior order from the Judge closing the record in the appropriate situation.

Thank you, gentlemen.

The hearing is adjourned.

MR. BRAND: Thank you.

MR. KRAMER: Thank you, your Honor.

MR. DAVIS: Thank you very much, your Honor.

(Time noted: 4:45 o'clock p.m.)

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CONTAINAIR SYSTEMS CORPORATION,

Respondent.

No. 76-4038

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the APPENDIX in the above-entitled case, on the following counsel of record, this 2 day of June 1976.

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Subscribed and Sworn to before me this